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Statutes:

All laws specifically codified by the General Assembly of the State of Georgia through the 2015 Regular Session of the General Assembly.

Annotations of Judicial Decisions:

Case annotations reflecting decisions posted to LexisNexis® through April 3, 2015. These annotations will appear in the following traditional reporter sources: Georgia Reports; Georgia Appeals Reports; Southeastern Reporter; Supreme Court Reporter; Federal Reporter; Federal Supplement; Federal Rules Decisions; Lawyers' Edition; United States Reports; and Bankruptcy Reporter.

Annotations of Attorney General Opinions:

Constructions of the Official Code of Georgia Annotated, prior Codes of Georgia, Georgia Laws, the Constitution of Georgia, and the Constitution of the United States by the Attorney General of the State of Georgia posted to LexisNexis® through April 3, 2015.

Other Annotations:

References to:

Emory Bankruptcy Developments Journal.
Emory International Law Review.
Emory Law Journal.
Georgia Journal of International and Comparative Law.
Georgia Law Review.
Georgia State University Law Review.
John Marshall Law Review.
Mercer Law Review.
Georgia State Bar Journal.
Georgia Journal of Intellectual Property Law.
American Jurisprudence, Second Edition.
American Jurisprudence, Pleading and Practice.
American Jurisprudence, Proof of Facts.
American Jurisprudence, Trials.
Corpus Juris Secundum.
Uniform Laws Annotated.
American Law Reports, First through Sixth Series.
American Law Reports, Federal.

Tables:

In Volume 41, a Table Eleven-A comparing provisions of the 1976 Constitution of Georgia to the 1983 Constitution of Georgia and a Table Eleven-B comparing provisions of the 1983 Constitution of Georgia to the 1976 Constitution of Georgia.

An updated version of Table Fifteen which reflects legislation through the 2015 Regular Session of the General Assembly.

Indices:

A cumulative replacement index to laws codified in the 2015 supplement pamphlets and in the bound volumes of the Code.

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TITLE 52

WATERS OF THE STATE, PORTS, AND WATERCRAFT

Chap.

1. General Provisions, 52-1-1 through 52-1-39.
2. Georgia Ports Authority, 52-2-1 through 52-2-39.
7. Registration, Operation, and Sale of Watercraft, 52-7-1 through 52-7-77.

CHAPTER 1

GENERAL PROVISIONS

Article 1

Protection of Tidewaters

Sec.

52-1-3. Definitions.

Sec.

52-1-32. Definitions.

Article 2

Right of Passage

ARTICLE 1

PROTECTION OF TIDEWATERS

52-1-3. Definitions.

As used in this article, the term:

- (1) "Board" means the Board of Natural Resources.
- (2) "Commissioner" means the commissioner of natural resources.
- (3) "Structure" means any structure located upon any tidewaters of this state, whether such structure is floating upon such tidewaters and is made fast by the use of lines, cables, anchors, or pilings, or any combination thereof, or is built upon pilings embedded in the beds of such tidewaters when such structure is being or has been used or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used as a means of transportation upon such tidewaters; and is not owned, occupied, or possessed pursuant to a permit issued by the commissioner pursuant to Code Section 52-1-10. Such structures may include, but are not limited to, vessels not being used in navigation; provided, however, that structures do not include live-aboards, as defined in Code Section 12-5-282. Structures shall

also not include fishing camps, bait shops, restaurants, or other commercial establishments permitted under Part 4 of Article 4 of Chapter 5 of Title 12, the "Coastal Marshlands Protection Act of 1970," as amended, which do not discharge sewage into the waters of the state and are operated in conformance with the zoning ordinances, if any, of the municipality or county in which they are located.

(4) "Tidewaters" means the sea and all rivers and arms of the sea that are affected by the tide, where the tide rises and falls, which are capable of use for fishing, passage, navigation, commerce, or transportation, and which are located within the jurisdiction of the State of Georgia. (Code 1981, § 52-1-3, enacted by Ga. L. 1992, p. 2317, § 1; Ga. L. 1993, p. 91, § 52; Ga. L. 2012, p. 1074, § 4/SB 319.)

The 2012 amendment, effective July 1, 2012, substituted "live-aboards, as defined in Code Section 12-5-282" for "ves-

sels which are capable of navigation and are tied up at marinas" in the second sentence of paragraph (3).

ARTICLE 2

RIGHT OF PASSAGE

52-1-32. Definitions.

As used in this article, the term:

- (1) "Board" means the Board of Natural Resources.
- (2) "Commissioner" means the commissioner of natural resources.
- (3) "Navigable stream or river" means a stream or river which is capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year.
- (4) "Structure" means any structure located upon any navigable stream or river of this state, whether such structure is floating upon such navigable stream or river and is made fast by the use of lines, cables, anchors, or pilings, or any combination thereof, or is built upon pilings embedded in the beds of such navigable stream or river when such structure is being, has been, or is capable of being used as a place of habitation, dwelling, sojournment, or residence for any length of time; is not being used or is not capable of being used as a means of transportation upon such navigable stream or river; and is not owned, occupied, or possessed pursuant to a permit issued by the commissioner pursuant to Code Section 52-1-39. Such structures may include, but are not limited to, vessels not being used in navigation; provided, however, that structures do not include live-aboards, as defined in Code Section 12-5-282. Structures shall also not include fishing camps, bait shops, restaurants, or other commercial estab-

lishments permitted under Part 4 of Article 4 of Chapter 5 of Title 12, the “Coastal Marshlands Protection Act of 1970,” as amended, which do not discharge sewage into the waters of the state and are operated in conformance with the zoning ordinances, if any, of the municipality or county in which they are located. (Code 1981, § 52-1-32, enacted by Ga. L. 1992, p. 2317, § 1; Ga. L. 1993, p. 91, § 52; Ga. L. 2012, p. 1074, § 5/SB 319.)

The 2012 amendment, effective July 1, 2012, substituted “live-aboards, as defined in Code Section 12-5-282” for “ves-

sels which are capable of navigation and are tied up at marinas” in the second sentence of paragraph (4).

CHAPTER 2

GEORGIA PORTS AUTHORITY

Sec.

52-2-9. Powers of authority generally.

52-2-9. Powers of authority generally.

The authority shall have the following powers:

- (1) To have a seal and alter the same at pleasure;
- (2) To acquire, hold, and dispose of personal property for its corporate purposes;
- (3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with and subject to any and all existing laws applicable to the condemnation of property for public use, real property or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or to dispose of the same in any manner it deems to the best advantage of the authority. The authority shall be under no obligation to accept and pay for any property condemned under this chapter, except from the funds provided under the authority of this chapter. In any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceeding as may be just to the authority and to the owners of the property to be condemned. No property shall be acquired under this chapter upon which any lien or other encumbrance exists unless at the time the property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the lien or encumbrance in full; provided, however, that nothing in this paragraph shall prohibit the

authority from acquiring property, real or personal, tangible or intangible, from the Brunswick Port Authority as otherwise authorized under this chapter and the laws of this state; and, if the authority deems it expedient to construct any project on lands the title to which then is in the State of Georgia, the Governor is authorized to convey, for and in behalf of the state, title to such lands to the authority upon payment to the Office of the State Treasurer for the credit of the general fund of the state treasury of the reasonable value of such lands, such value to be determined by three appraisers to be agreed upon by the Governor and the chairperson of the authority;

(4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts and attorneys, and to fix their compensation;

(5) To make contracts and to execute all instruments necessary or convenient, including contracts for acquisition, construction, and installation of projects and leases of projects or contracts with respect to the use of projects which it causes to be erected or acquired, and to make such contracts and leases with the state, state institutions, and departments and agencies of the state; rentals under leases with the state or any department, agency, or institution of the state shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of this state or from any other funds lawfully available;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects, as defined in paragraph (6) of Code Section 52-2-2, to be located on property owned by the authority, the cost of any such project to be paid from the proceeds of revenue bonds or other obligations of the authority or from such proceeds and any grant from the United States of America or any agency or instrumentality thereof;

(7) To accept loans and grants, either or both, of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose and to comply with such terms and conditions; including but not limited to the power to provide indemnification on behalf of the authority or any other agency or instrumentality of the state if such other agency or instrumentality be an equal participant with the authority as a non-federal sponsor of a congressionally authorized civil works project for the benefit of the United States of America or any agency or instrumentality thereof, which power has existed since the creation of the authority;

(8) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable from earnings of such projects and

to provide for the payment of the same and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state;

(10) To do all things necessary or convenient to carry out the powers expressly given in this chapter;

(11) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof in any matter coming within the purposes or powers of the authority;

(12) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, as the authority may deem necessary or expedient in facilitating its business;

(13) To do any and all other acts and things in this chapter authorized or required to be done, whether or not included in the general powers mentioned in this Code section;

(14) To receive gifts, donations, or contributions from any person, firm, or corporation;

(15) To contract with any municipality or county for the leasing, operation, or management of real or personal property in or adjacent to any seaport of this state;

(16) To develop and improve the harbors or seaports of this state for the handling of waterborne commerce from and to any part of this state and other states and foreign countries;

(17) To acquire, construct, equip, maintain, develop, and improve said harbors or seaports and their port facilities;

(18) To foster and stimulate the shipment of freight and commerce through such ports, whether originating within or without this state, including the investigation and handling of matters pertaining to all transportation rates and rate structures affecting the same;

(19) To own, lease, and operate tug boats, locomotives, and any and every kind of character of motive power and conveyances or appliances necessary or proper to carry passengers, goods, wares, merchandise, or articles of commerce in, on, or around its projects;

(20) To hold, use, administer, and expend such sum or sums as may hereafter be appropriated by authority of the General Assembly for any of the purposes of the authority;

(21) To do any other things necessary or proper to foster or encourage the commerce, domestic or foreign, of the state, of the United States of America, or of the several sister states; and

(22) To appoint and select employees designated as security guards who shall have a limited power to make arrests for certain offenses committed on any property under the jurisdiction of the Georgia Ports Authority. (Ga. L. 1945, p. 464, § 4; Ga. L. 1963, p. 342, § 3; Ga. L. 1976, p. 1640, § 1; Ga. L. 1982, p. 3, § 52; Ga. L. 1988, p. 254, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296; Ga. L. 2010, p. 897, § 3/HB 1060; Ga. L. 2015, p. sb0005, § 2/SB 5.)

The 2015 amendment, effective February 23, 2015, added the language following “instrumentality may impose” in paragraph (7).

Editor's notes. — Ga. L. 2015, p. sb5,

§ 1/SB 5, not codified by the General Assembly, provides: “This Act is enacted pursuant to Article III, Section VI, Paragraph II(a)(3) of the Constitution of Georgia.”

CHAPTER 6

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Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

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ARTICLE 1

GENERAL PROVISIONS

52-7-5. Numbering of vessels; requirements; fees.

(a) The owner of each vessel required to be numbered by this article shall file an application for number with the department on forms containing such information required by the department. Upon receipt of the completed application and any other required information and documents, the department shall enter the application upon its records and issue to the applicant a certificate of number stating the number assigned to the vessel, the name and address of the owner, and such additional information as may be prescribed by the department.

(b)(1) The identification number assigned to all registered vessels, except those documented by the United States Coast Guard, shall be permanently painted or attached to each side of the forward half of the vessel, and no other number may be displayed thereon. Numbers shall read from left to right, be in block characters, be of a color contrasting with the background, and be not less than three inches in height nor more than one inch apart. There shall be a hyphen or

space between the prefix letters and numerals and between the numerals and the suffix letters. The hyphen or space shall be equal to the width of any letter except I.

(2) On vessels so configured that a number on the hull or superstructure would not be easily visible, the number shall be painted on or attached to a backing plate that is attached to the forward half of the vessel so that the number will be clearly visible under normal operating conditions.

(3) The numbers shall be maintained in a legible condition.

(4) Vessels owned by manufacturers or dealers and being used as demonstrators or for testing may use the dealer's tag supplied with his or her registration in lieu of a permanently attached number.

(c) Expiration decals shall be assigned by the department to all registered vessels. Such decals shall be displayed one on each side of the bow preceding the prefix letters and maintained in legible condition. There shall be a hyphen or space separating each decal and the prefix letters which shall be equal to the width of any letter except I.

(d) Applications shall be signed by the owner or owners of the vessel and shall be accompanied by the proper fee. Fees for numbering vessels for a registration period of three years shall be as follows:

(1) Vessels up to 16 feet in length	\$ 15.00
(2) Vessels 16 to 26 feet in length	36.00
(3) Vessels 26 to 40 feet in length	90.00
(4) Vessels 40 feet in length or longer	150.00

(e)(1) Registration for vessels shall expire on the last day of the month of the owner's birth in the last year of the registration period and shall thereafter be of no force or effect unless renewed pursuant to this article; provided, however, that the registration for vessels not owned by individuals shall expire on December 31 of the last year of the registration period. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of such certificates.

(2) Registrations may be renewed any time after October 1 prior to the year of expiration. If the certificate of number is allowed to expire, a renewal application may still be filed with the department so long as the applicant pays the registration fee prescribed in subsection (d) of this Code section along with a \$10.00 late fee.

(3) Any application for renewal which, due to failure of the applicant to provide additional information required by the department, remains incomplete 60 days after initial receipt of such

application shall expire and a new application and registration fee shall be required for renewal.

(f) Should the ownership of a numbered vessel change while a valid registration is in effect, the new owner shall file with the department a new application and pay the prescribed fee for a new registration. The number assigned upon transfer of ownership shall be identical to the previous number unless such number has been reassigned by the department during any expired registration period.

(g) In the event that an agency of the United States government shall have in force an overall system of identification (numbering) for vessels within the United States, the numbering system employed pursuant to this article by the department shall be in conformity therewith.

(h) The department may issue any certificate of number, expiration decal, marine toilet certification, or other permit provided for in this chapter directly or may authorize any person to act as agent for the issuing thereof. In the event that a person accepts such authorization to issue certificates of number, he or she may be allotted a block of numbers and certificates therefor which, upon assignment and issue in conformity with this article and with any rules and regulations of the department, shall be valid as if assigned and issued directly by the department. Any person acting as agent for the department may charge a fee for his or her services in an amount approved by the department not to exceed \$10.00 per transaction.

(i) All records of the department made or kept pursuant to this Code section shall be public records.

(j) The owner shall furnish the department written notice of the transfer of all or of any part of his or her interest, other than the creation of a security interest, in a vessel numbered in this state pursuant to this Code section, the theft or recovery of the vessel, or the destruction or abandonment of the vessel within 15 days thereof.

(k) Any holder of a certificate of number shall notify the department in writing within 15 days if his or her address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the department with his or her new address.

(l) No number other than the number validly assigned to a vessel shall be painted, attached, or otherwise displayed on either side of the forward half of the vessel.

(m)(1) A certificate of number once issued pursuant to this Code section shall be considered void upon the happening of any one of the following events:

- (A) The owner transfers all his or her interest in said vessel to another person or involuntarily loses his or her interest through legal process;
- (B) The vessel is destroyed or abandoned;
- (C) It is discovered by the department that the application submitted by the owner contains false or fraudulent information;
- (D) The fees for issuance are not paid by the applicant; or
- (E) The state of principal use is changed.

(2) A void certificate shall be surrendered to the department within 15 days from the date that it becomes or is declared to be void.

(n) The number placed on the forward half of the vessel by the owner shall be removed by the owner if:

- (1) The vessel is documented under the laws of the United States;
- (2) The certificate or number becomes invalid because it is determined that a false or fraudulent statement was made in the application or the fees have not been paid; or
- (3) The vessel is no longer used in this state.

(o) The board shall be authorized to establish, by rule or regulation, a procedure to refund fees collected pursuant to this chapter which were collected in error or overpayment or to which the department or state is otherwise not entitled. (Ga. L. 1960, p. 235, §§ 6, 7; Ga. L. 1965, p. 251, § 1; Ga. L. 1968, p. 487, §§ 3-6; Ga. L. 1973, p. 1427, § 6; Ga. L. 1976, p. 1632, §§ 5-7; Ga. L. 1977, p. 1182, §§ 2, 3; Ga. L. 1980, p. 738, §§ 2-4; Ga. L. 1981, p. 147, §§ 1-3; Ga. L. 1982, p. 3, § 52; Ga. L. 1987, p. 567, §§ 3, 4; Ga. L. 1992, p. 6, § 52; Ga. L. 1992, p. 470, § 3; Ga. L. 1992, p. 998, § 2; Ga. L. 1993, p. 351, § 1; Ga. L. 1996, p. 1276, § 1; Ga. L. 2011, p. 558, § 5/SB 121; Ga. L. 2013, p. 892, § 1/HB 497.)

The 2013 amendment, effective July 1, 2013, rewrote this Code section.

52-7-6. Exemptions from numbering requirements.

A vessel shall not be required to be numbered under Code Sections 52-7-4 and 52-7-5 if it is:

- (1) Not motor propelled; provided, however, that sailboats 12 feet or more in length shall require registration;
- (2) Covered by a certificate of number in full force and effect which has been issued to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall

not be used on the waters of this state for a period in excess of 60 consecutive days;

(3) From a country other than the United States, provided that such vessel shall not be used on the waters of this state for a period in excess of 60 consecutive days;

(4) A vessel whose owner is the United States, a state, or a subdivision thereof, which vessel is used exclusively in the nonrecreation public service and which is clearly identifiable as such;

(5) A vessel's lifeboat if the boat is used solely for lifesaving purposes; this exemption does not include dinghies, tenders, speed-boats, or other types of craft carried aboard vessels and used for other than lifesaving purposes;

(6) A vessel that is used exclusively for racing;

(7) A vessel belonging to a class of boats which has been exempted from numbering by the department after the department has found that:

(A) The numbering of vessels of such class will not materially aid in their identification;

(B) An agency of the federal government has a numbering system applicable to the class of vessel to which the vessel in question belongs; and

(C) The vessel would also be exempt from numbering if it were subject to the federal law;

(8) Operating temporarily by virtue of evidence that an application for a certificate of number has been submitted within the previous 60 days; or

(9) Used exclusively on privately owned ponds or lakes, except for those licensed by the Federal Energy Regulatory Commission. (Ga. L. 1960, p. 235, § 5; Ga. L. 1973, p. 1427, § 5; Ga. L. 1981, p. 147, § 4; Ga. L. 1982, p. 3, § 52; Ga. L. 1987, p. 567, § 5; Ga. L. 2006, p. 96, § 4/HB 1490; Ga. L. 2013, p. 892, § 2/HB 497.)

The 2013 amendment, effective July 1, 2013, in paragraph (8), substituted “that an application” for “that a recent

application” in the middle and added “within the previous 60 days” at the end.

52-7-7. Dealers' vessels.

(a) Any dealer may obtain certificates of number to be used only for the purpose of testing or demonstrating vessels owned by the dealer. The fee for the first certificate of number issued to any dealer for each vessel classification shall be the same fee as prescribed in subsection (d)

of Code Section 52-7-5 and the dealer may then be issued additional certificates of number for testing and demonstrating purposes at a reduced fee as provided by the board. The amount of the reduced fee shall be determined by the board and shall be a reasonable approximation of the cost of producing and distributing the certificates of number and may be changed from time to time.

(b) Dealers shall be authorized to transfer certificates of number issued pursuant to this Code section from one vessel to another vessel in the same classification.

(c) Any dealer desiring certificates of number shall make application for them on standard vessel registration forms which shall be accompanied by an affidavit stating that the applicant is a vessel dealer or manufacturer.

(d) Numbers assigned by such certificates shall be temporarily placed on vessels within the certificate's class range whenever such vessels are being tested or demonstrated and must be plainly marked "DEALER." Such temporary placement of numbers shall be as the board shall provide by regulation. (Ga. L. 1968, p. 487, § 7; Ga. L. 1973, p. 1427, § 7; Ga. L. 2013, p. 892, § 3/HB 497.)

The 2013 amendment, effective July 1, 2013, substituted "subsection (d)" for "subsection (c)" in the middle of the second sentence of subsection (a).

52-7-7.3. Seizure of vessels without hull identification numbers; seizure of related property; inspections.

(a) If the hull identification number on a vessel required by Code Section 52-7-7.1 or 52-7-7.2 to have a hull identification number does not exist or has been altered, removed, destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the vessel, and any items used while towing such vessel, may be seized as contraband by a law enforcement agency or the department and shall be subject to forfeiture in accordance with the procedures set forth in Chapter 16 of Title 9.

(b) A vessel described in subsection (a) of this Code section shall not be sold or operated on the waters of the state unless the department:

(1) Receives a request from a law enforcement agency providing adequate documentation for a replacement hull identification number; or

(2) Is directed by written order of a court of competent jurisdiction to issue to the vessel a replacement hull identification number.

(c) The failure to have the hull identification number clearly displayed in compliance with this article shall be probable cause for any

law enforcement officer to make further inspection of the vessel in question to ascertain the true identity thereof.

(d) Prior to the vessel being sold or returned to the owner or otherwise disposed of, the department shall assign it a new hull identification number in accordance with federal law. (Code 1981, § 52-7-7.3, enacted by Ga. L. 2006, p. 96, § 5/HB 1490; Ga. L. 2015, p. hb0233, § 3-30/HB 233.)

The 2015 amendment, effective July 1, 2015, in subsection (a), substituted “such vessel, may be seized as contraband” for “said vessel, may be seized as contraband property” and added “in accordance with the procedures set forth in Chapter 16 of Title 9” at the end; redesignated the former last sentence of the introductory paragraph of subsection (a) as subsection (b); substituted “A vessel described in subsection (a) of this Code section” for “Such vessel” at the beginning of subsection (b); deleted the undesignated paragraph following paragraph (b)(2), which read: “Thereafter, the replacement HIN shall be used for identification pur-

poses. No vessel shall be forfeited if the owner was unaware the vessel’s HIN had been altered, removed, destroyed, covered, or defaced.”; redesignated former subsection (b) as present subsection (c); and added subsection (d). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2015, p. hb233, § 4-1/HB 233, not codified by the General Assembly, provides: “This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure.”

52-7-7.4. Property not subject to replevin; report by law enforcement agency of seizure of property; procedures.

Reserved. Repealed by Ga. L. 2015, p. hb233, § 3-31/HB 233, effective July 1, 2015.

Editor’s notes. — This Code section was based on Code 1981, § 52-7-7.4, enacted by Ga. L. 2006, p. 96, § 5/HB 1490.

52-7-8. Classification of vessels; required equipment.

(a) **Classification.** Vessels subject to the provisions of this article shall be divided into four classes as follows:

(1) Class A	Less than 16 feet in length
(2) Class 1	16 feet or over and less than 26 feet in length
(3) Class 2	26 feet or over and less than 40 feet in length
(4) Class 3	40 feet or more in length

(b) **Lights.** Every vessel in all weathers from sunset to sunrise shall carry and exhibit lights as provided by regulations of the board.

(c) **Whistle or horn.** Every vessel of Class 2 or 3 shall be provided with an efficient whistle or horn or other sound-producing mechanical appliance capable of producing signals required by the rules for the prevention of collision enacted by Congress.

(d) **Lifesaving devices.**

(1) Every vessel shall be equipped with and carry aboard, at all times, at least one Type I, II, III, or V (hybrid) personal flotation device for each person on board; provided, however, Type V (hybrid) devices are acceptable only when worn and securely fastened. In addition to the individual personal flotation device, each vessel 16 feet or more in length, except for canoes and kayaks, must at all times be equipped with at least one Type IV (throwable) device.

(2) No person may use a vessel upon the waters of this state unless the personal flotation devices as required in paragraph (1) of this subsection are readily accessible to the occupants of the vessel, are in good and serviceable condition, are legibly marked with the United States Coast Guard approved number, and are of an appropriate size for the occupants of the vessel for whom they are intended; provided, however, that provisions of this subsection shall not apply to racing sculls, racing shells, and racing sweeps.

(3) No person shall operate a moving vessel upon the waters of this state with a child under the age of 13 years on board such vessel unless such child is wearing an appropriately sized personal flotation device, as required by this subsection to be on board the vessel. This requirement shall not apply when the child is within a fully enclosed roofed cabin or other fully enclosed roofed compartment or structure on the vessel.

(e) **Fire extinguishers.**

(1) Every mechanically propelled Class A and Class 1 vessel, constructed so as to have enclosed areas which permit entrapment of gases or vapors, shall carry aboard one Type B-I United States Coast Guard approved hand portable fire extinguisher unless there is a United States Coast Guard approved fixed fire-extinguishing system installed in the machinery space. When such a fixed fire-extinguishing system is installed in the machinery space, no hand portable fire extinguisher will be required.

(2) Every mechanically propelled Class 2 vessel, regardless of construction, shall carry aboard two Type B-I or one Type B-II United States Coast Guard approved hand portable fire extinguisher. When a United States Coast Guard approved fixed fire-extinguishing system is installed in the machinery space, one less Type B-I hand portable fire extinguisher is required.

(3) Every mechanically propelled Class 3 vessel, regardless of construction, shall carry aboard three Type B-I or one Type B-I and one Type B-II United States Coast Guard approved hand portable fire extinguisher. When a United States Coast Guard approved fixed fire-extinguishing system is installed in the machinery space, one less Type B-I hand portable fire extinguisher is required.

(4) The carriage of any dry stored pressure fire extinguishers not fitted with pressure gauges or indicating devices or any vaporizing liquid fire extinguishers containing carbon tetrachloride, chlorobomethane, or any other toxic vaporizing liquids is prohibited.

(5) The carriage of any United States Coast Guard approved hand portable fire extinguisher or any fixed fire extinguishing system which is not fully charged shall be prohibited.

(f) **Equipment exemptions in authorized races.** Subsections (c) and (e) of this Code section shall not apply to vessels while competing in any race conducted pursuant to Code Section 52-7-19 or, if such vessels are designed and intended solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

(g) **Flame arrester for carburetor.** Every vessel shall have the carburetor or carburetors of every engine therein, except outboard motors using gasoline as fuel, equipped with an efficient United States Coast Guard approved flame arrester, backfire trap, or other similar device.

(h) **Ventilation.** Every such vessel, except open boats, using as fuel any liquid of a volatile nature, shall be provided with means for properly and efficiently ventilating the bilges of the engine and fuel tank compartments so as to remove any explosive or flammable gases.

(i) **Rules and regulations.** No person shall operate or give permission for the operation of a vessel which is not equipped as required by this article or the rules and regulations of the department made pursuant thereto.

(j) **Sale of personal flotation devices.** It shall be unlawful for any person to sell or offer for sale within this state any personal flotation device which is not United States Coast Guard approved unless such device is clearly marked as follows: "Notice: This personal flotation device is not United States Coast Guard approved."

(k) **Definition.** As used in this Code section, the term "personal flotation device" shall not include flotation devices such as plastic toys, rafts, and other devices used for recreational purposes in or around swimming pools, lakes, or beaches when such devices are easily

recognizable as not being designed or intended for use as lifesaving devices.

(1) **Penalty.** Any person who violates this Code section shall be guilty of a misdemeanor. (Ga. L. 1968, p. 487, § 10; Ga. L. 1973, p. 1427, § 8; Ga. L. 1975, p. 773, § 1; Ga. L. 1976, p. 1632, §§ 2, 3; Ga. L. 1977, p. 1182, §§ 4-6; Ga. L. 1978, p. 1743, § 2; Ga. L. 1982, p. 3, § 52; Ga. L. 1984, p. 1203, § 1; Ga. L. 1985, p. 149, § 52; Ga. L. 1987, p. 567, § 6; Ga. L. 1992, p. 2075, § 1; Ga. L. 1994, p. 680, § 2; Ga. L. 1996, p. 326, § 1; Ga. L. 1996, p. 1273, § 1; Ga. L. 2001, p. 1000, § 1; Ga. L. 2003, p. 481, § 2; Ga. L. 2012, p. 775, § 52/HB 942; Ga. L. 2013, p. 92, § 4/SB 136; Ga. L. 2014, p. 866, § 52/SB 340.)

The 2012 amendment, effective May 1, 2012, part of an Act to revise, modernize, and correct the Code, deleted the last sentence of subsection (k), which read: "Any person who violates this Code section shall be guilty of a misdemeanor."

The 2013 amendment, effective May 15, 2013, substituted "under the age of 13 years on board such vessel unless such child" for "under age of ten on board such vessel unless the child" in the first sentence of paragraph (d)(3). See editor's note for applicability.

The 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, substituted "the term" for "the words" in subsection (k).

Editor's notes. — Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-8.2. Restrictions on operation of personal watercraft.

(a) As used in this Code section, the term:

(1) "Accompanied by" means in the physical presence within the vessel of a person who is not under the influence of alcohol, toxic vapors, or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel.

(2) "Personal watercraft" means a Class A vessel which:

(A) Has an outboard motor or which has an inboard motor which uses an internal combustion engine powering a water jet pump as its primary source of motive propulsion;

(B) Is designed with the concept that the operator and passenger ride on the outside surfaces of such vessel as opposed to riding inside such vessel; and

(C) Has the probability that the operator and passenger may, in the normal course of use, fall overboard.

Such term includes, without limitation, any vessel where the operator and passenger ride on the outside surfaces of the vessel, even if the primary source of motive propulsion is a propeller, and any vessel commonly known as a "jet ski."

(b) No person shall operate or give permission to operate personal watercraft on the waters of this state unless each person aboard such personal watercraft is wearing a United States Coast Guard approved personal flotation device, Type I, Type II, Type III, or Type V. Each such personal flotation device must be properly fastened, in good and serviceable condition, and the proper size for the person wearing it.

(c) Reserved.

(d) No person shall operate a personal watercraft on the waters of this state after sunset or before sunrise unless such person is engaged in the enforcement of the laws of this state or this nation.

(e) No person shall operate a personal watercraft on the waters of this state unless such personal watercraft is equipped with a self-circling device or a lanyard-type engine cutoff switch.

(f) No person shall operate on the waters of this state a personal watercraft which has been equipped by the manufacturer with a lanyard-type engine cutoff switch unless the lanyard and the switch are operational and unless the lanyard is attached to the operator, the operator's clothing, or a personal flotation device worn by the operator.

(g) No person shall operate on the waters of this state a personal watercraft which has been equipped by the manufacturer with a self-circling device if the self-circling device or the engine throttle has been altered in any way that would prohibit the self-circling device from operating in its intended manner.

(h) It shall be unlawful for any person who owns a personal watercraft or who has charge over or control of a personal watercraft to authorize or knowingly to permit such personal watercraft to be operated in violation of this Code section or of Code Section 52-7-8.3.

(i) The provisions of this Code section shall not apply to vessels engaged in any activity authorized under Code Section 52-7-19.

(j) No person shall operate a personal watercraft on the waters of this state at a speed greater than idle speed within 100 feet of any moored or anchored vessel, any vessel adrift, or any wharf, dock, pier, piling, bridge structure or abutment, person in the water, or shoreline adjacent to a full-time or part-time residence, public park, public beach, public swimming area, marina, restaurant, or other public use area.

(k) It shall be unlawful for any person to operate a personal watercraft on the waters of this state while towing a person or persons on

water skis, aquaplanes, surfboards, tubes, or any similar device; provided, however, that the provisions of this subsection shall not apply to any personal watercraft designed by the manufacturer to carry three or more persons, provided that such personal watercraft has on board a competent observer in addition to the operator at any time that a person is being towed.

(l) No person under the age of 16 years shall operate a personal watercraft on the waters of this state; provided, however, that a person 12 through 15 years of age may operate a personal watercraft if he or she is accompanied by an adult 18 years of age or older or he or she has successfully completed a boating education course approved by the department. The department may conduct or provide boating education courses to the public.

(m) It shall be unlawful for any person to cause or knowingly permit such person's child or ward who is less than 12 years of age or the child or ward of another over whom such person has a permanent or temporary responsibility of supervision if such child or ward is less than 12 years of age to operate a personal watercraft.

(n) It shall be unlawful for any person to cause or knowingly permit such person's child or ward who is age 12 through 15 years or the child or ward of another over whom such person has a permanent or temporary responsibility of supervision if such child or ward is age 12 through 15 years to operate a personal watercraft other than in compliance with the provisions of subsection (l) of this Code section. (Code 1981, § 52-7-8.2, enacted by Ga. L. 1992, p. 2075, § 2; Ga. L. 1994, p. 680, §§ 3, 4; Ga. L. 1995, p. 10, § 52; Ga. L. 1998, p. 679, § 1; Ga. L. 2013, p. 92, § 5/SB 136.)

The 2013 amendment, effective May 15, 2013, in subsection (a), inserted “, toxic vapors,” in paragraph (a)(1); deleted former paragraph (a)(2), which read: “‘Class A vessel’ means a boat less than 16 feet in length.”; redesignated former paragraph (a)(3) as present paragraph (a)(2); substituted “such vessel” for “the vessel” twice in subparagraph (a)(2)(B); in the ending undesignated paragraph of paragraph (a)(2), substituted “vessel commonly” for “vessels commonly” near the end; and deleted former paragraph (a)(4), which read: “‘Under the direct supervision’ means within sight of and within 400 yards of a person who is not under the influence of alcohol or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel and who is aware of his or

her supervisory responsibility.”; substituted the present provisions of subsection (c) for the former provisions, which read: “No person shall rent, lease, or let for hire a personal watercraft to any person under the age of 16 years”; substituted the present provisions of subsection (l) for the former provisions, which read: “On and after June 1, 1995, no person under the age of 16 years shall operate a personal watercraft on the waters of this state; provided, however, that a person age 12 through 15 years may operate a personal watercraft if he or she is accompanied by an adult age 18 or over or he or she has successfully completed a personal watercraft safety program approved by the department or is under direct supervision by an adult age 18 or over. The department may, but shall not be required to, conduct

or provide personal watercraft safety courses to the public.”; and substituted “It shall” for “On and after July 1, 1995, it shall” at the beginning of subsection (m). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 5, 6, and 11 of this Act shall be known and may be cited as the “Kile Glover Boat Education Law”.

Ga. L. 2013, p. 92, § 14/SB 136, not

codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-8.3. Operation of watercraft; identification; operation by minors.

(a) A person 16 years of age or older may operate any vessel or personal watercraft on any of the waters of this state if such person has met the applicable requirements of Code Section 52-7-22, and such person has in such vessel proper identification.

(b) A person 12 through 15 years of age may operate a personal watercraft or Class A vessel on any of the waters of this state in compliance with the provisions of this article if such person:

(1) Is accompanied by an adult 18 years of age or older who is authorized to operate such vessel under the provisions of subsection (a) of this Code section; or

(2) Has completed a boating education course approved by the department.

(c) No person between 12 through 15 years of age may operate a Class 1, Class 2, or Class 3 vessel.

(d) No person under the age of 12 years shall operate any Class 1, 2, or 3 vessel or any personal watercraft on any of the waters of this state, and no such person shall operate any Class A vessel utilizing mechanical means of propulsion exceeding 30 horsepower. Such person may operate a Class A vessel, other than a personal watercraft, utilizing mechanical means of propulsion not exceeding 30 horsepower only where such person is accompanied by an adult 18 years of age or older who is authorized to operate such vessel under the provisions of subsection (a) of this Code section.

(e) No person having ownership or control of a vessel shall permit another person to operate such vessel in violation of this Code section.

(f) No person shall rent, lease, or let for hire any vessel ten horsepower or more to any person under 16 years of age. On and after July 1, 2014, a person 16 years of age or older may rent or lease any

vessel ten horsepower or more if such person has completed a boating education course approved by the department. This subsection shall not apply to any person licensed by the United States Coast Guard as a master of a vessel or a nonresident who has in his or her possession proof that he or she has completed a National Association of State Boating Law Administrators approved boater education course or equivalency examination from another state.

(g) As used in this Code section, the term:

(1) "Accompanied by" means in the physical presence within the vessel of a person who is not under the influence of alcohol, toxic vapors, or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel.

(2) "Personal watercraft" shall have the same meaning as set forth in Code Section 52-7-8.2.

(3) "Proper identification" shall have the same meaning as in subsection (d) of Code Section 3-3-23, relating to furnishing of alcoholic beverages. (Code 1981, § 52-7-8.3, enacted by Ga. L. 1998, p. 679, § 2; Ga. L. 2000, p. 1563, § 1; Ga. L. 2003, p. 140, § 52; Ga. L. 2013, p. 92, § 6/SB 136.)

The 2013 amendment, effective May 15, 2013, rewrote subsections (a) through (c); in subsection (d), inserted "years" near the beginning of the first sentence, substituted "adult 18 years of age or older" for "adult age 18 or over" in middle of the second sentence; added subsections (e) and (f); redesignated former subsection (e) as present subsection (g); inserted ", toxic vapors," in the middle of paragraph (g)(1); added paragraph (g)(2); redesignated the former last sentence of former subsection (e) as present paragraph (g)(3); deleted former paragraph (g)(3), which read: "Under the direct supervision, means within sight of and within 400 yards of a person who is not under the influence of alcohol or drugs to a degree which would constitute a violation of Code Section 52-7-12 were such person operating the vessel and who is aware of his or her supervisory responsibility."; and deleted former subsection (f), which read: "No person having ownership or control of

a vessel shall permit another person to operate such vessel in violation of this Code section." See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 5, 6, and 11 of this Act shall be known and may be cited as the "Kile Glover Boat Education Law".

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-11. Lights.

(a) **Categories.** Requirements for lights on vessels operated within this state fall into two categories: regulations for vessels using inland waters (waters of this state) and regulations for vessels using international waters (coastal waters). Vessels equipped to meet international waters requirements may operate on any waters; however, vessels equipped to meet inland waters requirements are restricted to inland waters.

(b) **Inland waters (waters within the state) requirements.**

(1) All nonmotorized vessels being operated during hours of darkness or low visibility shall have ready at hand a white light which shall be displayed in time to prevent collision.

(2) All motorized Class A and Class 1 vessels being operated during hours of darkness or low visibility shall display a 32 point white stern light visible for a distance of two miles, plus a 20 point combination red and green light on the bow or ten-point combination red and green side lights properly screened and visible for a distance of one mile and displayed lower than the white stern light.

(3) All motorized Class 2 and 3 vessels being operated during hours of darkness or low visibility shall display a 20 point white light on the bow visible for a distance of two miles, plus a 32 point white light on the stern fixed higher than the white light forward and visible for a distance of two miles, plus separate ten-point red and green side lights fitted with inboard screens to keep the lights from showing across the bow and visible for a distance of one mile.

(4) Class A and Class 1 vessels equipped with sail only or sail and motor, when under sail only while being operated during hours of darkness or low visibility, shall display a 20 point combination red and green light on the bow visible for a distance of one mile, plus a 12 point white stern light visible for a distance of two miles.

(5) Class 2 and Class 3 vessels equipped with sail only or sail and motor, when under sail only while being operated during the hours of darkness or low visibility, shall display separate ten-point red and green side lights, properly screened and visible for a distance of at least one mile, plus a 12 point white stern light visible for a distance of at least two miles.

(6) When any vessel is being powered by sail and motor both, that vessel shall carry the same lights as those required for power alone.

(c) **International waters (coastal) requirements.**

(1) All motorized Class A, Class 1, and Class 2 vessels being operated during the hours of darkness or low visibility shall display

either a 20 point combination red and green light on the bow, or else ten-point red and green side lights properly screened and visible for a distance of at least one mile, plus a 20 point white light displayed in the fore part of the vessel and visible for a distance of three miles displayed three feet above the combination or side lights, plus a 12 point white stern light visible for a distance of at least two miles.

(2) All motorized Class 3 vessels being operated during the hours of darkness or low visibility shall display either a 20 point combination red and green light on the bow or else ten-point red and green side lights properly screened and visible for a distance of one mile, plus a 20 point white light in the fore part of the vessel displayed nine feet above the gunwales and three feet higher than the colored lights and visible for a distance of three miles, plus a 12 point white stern light visible for at least two miles.

(3) All Class A, Class 1, and Class 2 vessels equipped with sail and motor being operated under power during hours of darkness or low visibility shall display either a 20 point combination red and green light on the bow or else ten-point red and green side lights properly screened and visible for one mile, plus a 20 point white light in the fore part of the vessel at least three feet higher than the colored lights and visible for a distance of three miles, plus a 12 point white stern light visible for a distance of two miles.

(4) All Class 3 vessels equipped with sail and motor being operated under power during hours of darkness or low visibility shall display either a 20 point combination red and green light on the bow or else ten-point red and green side lights properly screened and visible for a distance of two miles, plus a 20 point white light in the fore part of the vessel at least nine feet above the gunwale and three feet higher than the colored lights and visible for a distance of two miles, plus a 12 point white stern light visible for a distance of two miles.

(5) All sailboats of Class A, Class 1, and Class 2 being operated under sail only during the hours of darkness or low visibility shall display a 20 point combination red and green bow light visible for a distance of one mile, or ten-point red and green side lights properly screened and visible for a distance of one mile, plus a 12 point white stern light visible for a distance of two miles.

(6) All sailboats of Class 3, being operated under sail only during the hours of darkness or low visibility shall display a 20 point combination red and green bow light visible for a distance of one mile, or ten-point red and green side lights properly screened and visible for a distance of one mile, plus a 12 point white stern light visible for a distance of two miles.

(7) Sailing vessels may carry on top of the foremast two 20 point lights in a vertical line one over the other and separated so as to be

clearly distinguished. The upper light shall be red and the lower light green.

(d) **Vessels at anchor.** All vessels at anchor, except those anchored or moored within marinas or other designated anchorages, shall display a 32 point white stern light during hours of darkness or low visibility.

(e) **Other lights.** During the hours of darkness or low visibility, no other lights which may be mistaken for those prescribed shall be exhibited. (Ga. L. 1977, p. 1182, § 7; Ga. L. 1995, p. 10, § 52; Ga. L. 2013, p. 92, § 7/SB 136.)

The 2013 amendment, effective May 15, 2013, substituted “bow or ten-point combination red and green side lights properly screened and visible” for “bow, visible” in the middle of paragraph (b)(2). See editor’s notes.

Editor’s notes. — Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that

Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-12. Operation of watercraft while under influence of alcohol, toxic vapors, or drugs; legal drug use not exempted; blood and other chemical tests; test refusal; owner’s liability for allowing another to operate while intoxicated; civil and criminal actions; child endangerment.

(a) No person shall operate, navigate, steer, or drive any moving vessel, or be in actual physical control of any moving vessel, nor shall any person manipulate any moving water skis, moving aquaplane, moving surfboard, or similar moving device while:

(1) Under the influence of alcohol to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(2) Under the influence of any drug to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(3) Under the intentional influence of any glue, aerosol, or other toxic vapor to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(4) Under the combined influence of any two or more of the substances specified in paragraphs (1) through (3) of this subsection to the extent that it is less safe for the person to operate, navigate, steer, drive, manipulate, or be in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device;

(5) The person's alcohol concentration is 0.08 grams or more at any time within three hours after such operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device from alcohol consumed before such operating, navigating, steering, driving, manipulating, or being in actual physical control ended; or

(6) Subject to the provisions of subsection (b) of this Code section, there is any amount of marijuana or a controlled substance, as defined in Code Section 16-13-21, present in the person's blood or urine, or both, including the metabolites and derivatives of each or both without regard to whether or not any alcohol is present in the person's breath or blood.

(b) The fact that any person charged with violating this Code section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this Code section; provided, however, that such person shall not be in violation of this Code section unless such person is rendered incapable of operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device safely as a result of using a drug other than alcohol which such person is legally entitled to use.

(c) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol or drugs, evidence of the amount of alcohol or drug in a person's blood, urine, breath, or other bodily substance at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath, or other bodily substance, shall be admissible. Where such chemical test is made, the following provisions shall apply:

(1) Chemical analysis of the person's blood, urine, breath, or other bodily substance, to be considered valid under this Code section, shall have been performed according to methods approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation and by an individual possessing a valid permit issued by the Division of

Forensic Sciences for this purpose. The Division of Forensic Sciences of the Georgia Bureau of Investigation is authorized to approve satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct analyses and to issue permits, which shall be subject to termination or revocation at the discretion of the Division of Forensic Sciences;

(2) When a person undergoes a chemical test at the request of a law enforcement officer under subsection (e) of this Code section, only a physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person may withdraw blood for the purpose of determining the alcoholic or drug content therein, provided that this limitation shall not apply to the taking of breath or urine specimens. No physician, registered nurse, laboratory technician, emergency medical technician, or other qualified person or employer thereof shall incur any civil or criminal liability as a result of the medically proper obtaining of such blood specimens when requested in writing by a law enforcement officer;

(3) The person tested may have a physician or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The justifiable failure or inability to obtain an additional test shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer; and

(4) Upon the request of the person who submits to a chemical test or tests at the request of a law enforcement officer, full information concerning such test or tests shall be made available to such person or such person's attorney. The arresting officer at the time of arrest shall advise the person arrested of his or her rights to a chemical test or tests according to this Code section.

(d) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged, as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(1) If there was at that time an alcohol concentration of 0.05 grams or less, it shall be presumed that the person was not under the influence of alcohol, as prohibited by paragraphs (1), (4), and (5) of subsection (a) of this Code section;

(2) If there was at that time an alcohol concentration in excess of 0.05 grams but less than 0.08 grams, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, as prohibited by paragraphs (1), (4), and (5) of subsection (a) of this Code section, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol, as prohibited by paragraphs (1), (4), and (5) of subsection (a) of this Code section; and

(3) If there was at that time or within three hours after operating, navigating, steering, driving, manipulating, or being in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device from alcohol consumed before such operating, navigating, steering, driving, manipulating, or being in actual physical control ended an alcohol concentration of 0.08 or more grams, the person shall be in violation of paragraph (5) of subsection (a) of this Code section.

(e) The State of Georgia considers that persons who are under the influence of alcohol, toxic vapors, or drugs while operating a vessel on the waters of this state constitute a direct and immediate threat to the welfare and safety of the general public. Therefore, any person who operates a vessel upon the waters of this state shall be deemed to have given consent, subject to subsection (c) of this Code section, to a chemical test or tests of his or her blood, breath, or urine or other bodily substance for the purpose of determining the alcoholic or drug content of his or her blood if arrested for any offense arising out of acts alleged to have been committed while the person was operating, navigating, steering, driving, manipulating, or in actual physical control of a moving vessel, moving water skis, moving aquaplane, moving surfboard, or similar moving device while under the influence of alcohol, toxic vapors, or any drug. The test or tests shall be administered at the request of a law enforcement officer having reasonable grounds to believe that the person has been operating or was in actual physical control of a vessel upon the waters of this state while under the influence of alcohol, toxic vapors, or any drug. Subject to subsection (c) of this Code section, the requesting law enforcement officer shall designate which of the aforesaid tests shall be administered.

(f) Any person who is dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn the consent provided by subsection (e) of this Code section, and the test or tests may be administered subject to subsection (c) of this Code section.

(g) If a person refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (e) of this Code section, no test shall be given; however, such refusal shall be admissible in evidence.

(h) In the event of a boating accident involving a fatality, the investigating coroner or medical examiner having jurisdiction shall direct that a chemical blood test to determine blood alcohol concentration (BAC) or the presence of drugs be performed on the dead person or persons and that the results of such test be properly recorded in his or her report.

(i) It shall be unlawful for the owner of any vessel knowingly to allow or authorize any person to operate such vessel or to manipulate any water skis, aquaplane, surfboard, or similar device being towed by such vessel when the owner knows or has reasonable grounds to believe that said person is intoxicated or under the influence of alcohol, toxic vapors, or drugs in violation of this Code section.

(j) In any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person in violation of subsection (k) of this Code section, if there was at that time or within three hours after operating, navigating, steering, driving, or being in actual physical control of a moving vessel or personal watercraft from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control ended an alcohol concentration of 0.02 grams or more in the person's blood, breath, or urine, the person shall be in violation of subsection (k) of this Code section.

(k)(1) A person under the age of 21 years shall not operate, navigate, steer, drive, or be in actual physical control of any moving vessel, moving water skis, moving aquaplane, moving surfboard or similar moving device, or personal watercraft while such person's alcohol concentration is 0.02 grams or more at any time within three hours after such operating, navigating, steering, driving, or being in actual physical control from alcohol consumed before such operating, navigating, steering, driving, or being in actual physical control ended.

(2) No plea of nolo contendere shall be accepted for any person under the age of 21 years charged with a violation of this Code section.

(l) A person who violates this Code section while transporting in a moving vessel or personal watercraft or towing on water skis, an aquaplane, a surfboard, or similar device a child under the age of 14 years shall be guilty of the separate offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs. The offense of endangering a child by operating a moving vessel or personal watercraft under the influence of alcohol, toxic vapors, or drugs shall not be merged with the offense of operating a vessel under the influence of alcohol, toxic vapors, or drugs for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished in accordance with the provisions of subsection (d) of Code Section 16-12-1.

(m) Every person convicted of violating this Code section shall, upon a first or second conviction thereof, be guilty of a misdemeanor; upon a third conviction thereof, be guilty of a high and aggravated misdemeanor; and upon a fourth or subsequent conviction thereof, be guilty of a felony except as otherwise provided in paragraph (4) of this subsection and shall be punished as follows:

(1) For the first conviction with no conviction of and no plea of nolo contendere accepted to a charge of violating this Code section within the previous ten years, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$300.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not fewer than ten days nor more than 12 months, which period of imprisonment may, at the sole discretion of the judge, be suspended, stayed, or probated, except that if the offender's alcohol concentration at the time of the offense was 0.08 grams or more, the judge may suspend, stay, or probate all but 24 hours of any term of imprisonment imposed under this subparagraph;

(C) Not fewer than 40 hours of community service, except that for a conviction for violation of subsection (k) of this Code section where the person's alcohol concentration at the time of the offense was less than 0.08 grams, the period of community service shall be not fewer than 20 hours;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-1-1. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; provided, however, that in the court's discretion, such evaluation may be waived; and

(F) If the person is sentenced to a period of imprisonment for fewer than 12 months, a period of probation of 12 months less any days during which the person is actually incarcerated;

(2) For the second conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions

were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

- (A) A fine of not less than \$600.00 and not more than \$1,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;
- (B) A period of imprisonment of not fewer than 90 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 72 hours of actual incarceration;
- (C) Not fewer than 30 days of community service;
- (D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-1-1. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;
- (E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and
- (F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(3) For the third conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

- (A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;
- (B) A mandatory period of imprisonment of not fewer than 120 days and not more than 12 months. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose; provided, however, that the offender shall be required to serve not fewer than 15 days of actual incarceration;
- (C) Not fewer than 30 days of community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-1-1. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of 12 months less any days during which the person is actually incarcerated;

(4) For the fourth or subsequent conviction within a ten-year period of time, as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current arrest for which a conviction is obtained or a plea of nolo contendere is accepted:

(A) A fine of not less than \$1,000.00 and not more than \$5,000.00, which fine shall not, except as provided in subsection (n) of this Code section, be subject to suspension, stay, or probation;

(B) A period of imprisonment of not less than one year and not more than five years; provided, however, that the judge may suspend, stay, or probate all but 90 days of any term of imprisonment imposed under this paragraph. The judge shall probate at least a portion of such term of imprisonment, in accordance with subparagraph (F) of this paragraph, and to such other terms and conditions as the judge may impose;

(C) Not fewer than 60 days of community service; provided, however, that if a defendant is sentenced to serve three years of actual imprisonment, the judge may suspend the community service;

(D) Completion of a DUI Alcohol or Drug Use Risk Reduction Program as defined in Code Section 40-1-1. The sponsor of any such program shall provide written notice of the Department of Driver Services' certification of the program to the person upon enrollment in the program;

(E) A clinical evaluation as defined in Code Section 40-5-1 and, if recommended as a part of such evaluation, completion of a substance abuse treatment program as defined in Code Section 40-5-1; and

(F) A period of probation of five years less any days during which the person is actually imprisoned;

provided, however, that if the ten-year period of time as measured in this paragraph commenced prior to May 15, 2013, then such fourth or subsequent conviction shall be a misdemeanor of a high and aggravated nature and punished as provided in paragraph (3) of this subsection;

(5) For the purpose of imposing a sentence under this subsection, a plea of nolo contendere based on a violation of this Code section shall constitute a conviction; and

(6) For purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of this subsection, only those offenses for which a conviction is obtained or a plea of nolo contendere is accepted on or after May 15, 2013, shall be considered; provided, however, that nothing in this subsection shall be construed as limiting or modifying in any way sentence enhancement provisions under Georgia law, including, but not limited to, provisions relating to punishment of recidivist offenders pursuant to Title 17.

(n)(1) If the payment of the fine required under subsection (m) of this Code section will impose an economic hardship on the defendant, the judge, at his or her sole discretion, may order the defendant to pay such fine in installments, and such order may be enforced through a contempt proceeding or a revocation of any probation otherwise authorized by this Code section.

(2) In the sole discretion of the judge, he or she may suspend up to one-half of the fine imposed under subsection (m) of this Code section conditioned upon the defendant's undergoing treatment in a substance abuse treatment program as defined in Code Section 40-5-1.

(o) As used in this Code section, the term "personal watercraft" shall have the same meaning as set forth in Code Section 52-7-8.2. (Ga. L. 1968, p. 487, § 10; Ga. L. 1973, p. 1427, § 11; Ga. L. 1986, p. 612, § 1; Ga. L. 1987, p. 3, § 52; Ga. L. 1992, p. 2075, § 3; Ga. L. 1994, p. 680, § 5; Ga. L. 1998, p. 672, § 1; Ga. L. 2013, p. 92, § 8/SB 136; Ga. L. 2013, p. 294, § 4-62/HB 242; Ga. L. 2014, p. 710, § 1-21/SB 298; Ga. L. 2014, p. 866, § 52/SB 340.)

The 2013 amendments. — The first 2013 amendment, effective May 15, 2013, throughout this Code section, inserted ", toxic vapors," and substituted "bodily substance" for "bodily substances"; added paragraph (a)(3); redesignated former paragraphs (a)(3) through (a)(5) as present paragraphs (a)(4) through (a)(6), respectively; and, in paragraph (a)(4), substituted "any two or more of the

substances specified in paragraphs (1) through (3) of this subsection" for "alcohol and any drug" near the beginning; in paragraphs (a)(5) and (d)(3), substituted "0.08" for "0.10"; in the introductory paragraph of subsection (c), in the first sentence, and in paragraph (c)(4), in the first sentence, inserted "the" following "Upon" near the beginning; in paragraph (c)(2), in the first sentence, substituted "person un-

dergoes" for "person shall undergo" near the beginning, and inserted "or drug" near the middle; in paragraph (c)(4), in the first sentence, substituted "who submits" for "who shall submit", and substituted "such test" for "the test"; in paragraph (d)(1) and twice in paragraph (d)(2), substituted "paragraphs (1), (4), and (5)" for "paragraphs (1), (2), and (3)"; added "and" at the end of paragraph (d)(2); deleted former paragraph (d)(3), which read: "If there was at that time an alcohol concentration of 0.08 grams or more, it shall be presumed that the person was under the influence of alcohol, as prohibited by paragraphs (1), (2), and (3) of subsection (a) of this Code section; and"; redesignated former paragraph (d)(4) as present paragraph (d)(3); and, in paragraph (d)(3), substituted "paragraph (5)" for "paragraph (4)"; in subsection (e), substituted "subsection (c)" for "subsections (c) and (d)" in the second and last sentences, and in subsection (f); in paragraphs (k)(1) and (k)(2), inserted "years"; in paragraph (k)(1), substituted "such person's" for "the person's" near the middle; in paragraph (l), in the first sentence, added a comma following "surfboard" and substituted "14 years shall be" for "14 years is"; and added subsections (m) through (o). See editor's note for applicability. The second 2013 amendment, effective January 1, 2014, deleted ", relating to the offense of contributing to the delinquency, unruliness, or deprivation of a child" following "Code Section 16-12-1" at the end of the last sentence of subsection (l). See editor's note for applicability.

The 2014 amendments. — The first 2014 amendment, effective July 1, 2014, in subparagraphs (m)(1)(D), (m)(2)(D), (m)(3)(D), and (m)(4)(D), substituted "40-1-1" for "40-5-1" in the first sentence and substituted "Department of Driver Services' certification" for "Department of Drivers Service's approval" in the second sentence. The second 2014 amendment, effective April 29, 2014, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in subparagraphs (m)(1)(D), (m)(2)(D), (m)(3)(D), and (m)(4)(D). See the editor's

note regarding the effect of these amendments.

Editor's notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 8, 9, and 10 of this Act shall be known and may be cited as the "Jake and Griffin Prince BUI Law."

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

Ga. L. 2013, p. 294, § 5-1/HB 242, not codified by the General Assembly, provides that: "This Act shall become effective on January 1, 2014, and shall apply to all offenses which occur and juvenile proceedings commenced on and after such date. Any offense occurring before January 1, 2014, shall be governed by the statute in effect at the time of such offense and shall be considered a prior adjudication for the purpose of imposing a disposition that provides for a different penalty for subsequent adjudications, of whatever class, pursuant to this Act. The enactment of this Act shall not affect any prosecutions for acts occurring before January 1, 2014, and shall not act as an abatement of any such prosecutions."

Ga. L. 2014, p. 866, § 54(e)/SB 340, not codified by the General Assembly, provides: "In the event of a conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2014 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to subparagraphs (m)(1)(D), (m)(2)(D), (m)(3)(D), and (m)(4)(D) of this Code section by Ga. L. 2014, p. 866 § 52/SB 340, was not given effect.

52-7-12.5. Ordering drug, alcohol, or other substance tests; implied consent notice; reports; suspension; hearing; certificate of inspection.

(a) The test or tests required under Code Section 52-7-12 shall be administered as soon as possible at the request of a law enforcement officer having reasonable grounds to believe that the person has been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 and the officer has arrested such person for a violation of Code Section 52-7-12, any federal law in conformity with Code Section 52-7-12, or any local ordinance which is identical to Code Section 52-7-12 in accordance with Code Section 52-7-21 or the person has been involved in a boating accident resulting in serious injuries or fatalities. Subject to Code Section 52-7-12, the requesting law enforcement officer shall designate which test shall be administered initially and may subsequently require a test or tests for any substance not initially tested.

(b) At the time a chemical test or tests are requested, the arresting officer shall select and read to the person the appropriate implied consent warning from the following:

(1) Implied consent notice for suspects under 21 years of age:

“Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your privilege to operate a vessel on the waters of this state will be suspended for a minimum period of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.02 grams or more or the presence of any illegal drug, your privilege to operate a vessel on the waters of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?”; or

(2) Implied consent notice for suspects 21 years of age or older:

“Georgia law requires you to submit to state administered chemical tests of your blood, breath, urine, or other bodily substances for the purpose of determining if you are under the influence of alcohol or drugs. If you refuse this testing, your privilege to operate a vessel on the waters of this state will be suspended for a minimum period

of one year. Your refusal to submit to the required testing may be offered into evidence against you at trial. If you submit to testing and the results indicate an alcohol concentration of 0.08 grams or more or the presence of any illegal drug, your privilege to operate a vessel on the waters of this state may be suspended for a minimum period of one year. After first submitting to the required state tests, you are entitled to additional chemical tests of your blood, breath, urine, or other bodily substances at your own expense and from qualified personnel of your own choosing. Will you submit to the state administered chemical tests of your (designate which tests) under the implied consent law?"

If any such notice is used by a law enforcement officer to advise a person of his or her rights regarding the administration of chemical testing, such person shall be deemed to have been properly advised of his or her rights under this Code section and under Code Section 52-7-12.6, and the results of any chemical test, or the refusal to submit to a test, shall be admitted into evidence against such person. Such notice shall be read in its entirety but need not be read exactly so long as the substance of the notice remains unchanged.

(c) Nothing in this Code section shall be deemed to preclude the acquisition or admission of evidence of a violation of Code Section 52-7-12 if such evidence was obtained by voluntary consent or a search warrant as authorized by the Constitution or laws of this state or the United States.

(d) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities submits to a chemical test upon the request of a law enforcement officer and the test results indicate that a suspension of the privilege of operating a vessel on the waters of this state is required under this Code section, the results shall be reported to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters of this state and was involved in a boating accident involving serious injuries or fatalities and that the person submitted to a chemical test at the request of the law enforcement officer and the test results indicate either an alcohol concentration of 0.08 grams or more or, for a person under the age of 21 years, an alcohol concentration of 0.02 grams or more, and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege to operate a vessel upon the waters of this state pursuant to Code Section 52-7-12.6, subject to review as provided for in this Code section.

(e) If a person under arrest or a person who was involved in any boating accident resulting in serious injuries or fatalities refuses, upon the request of a law enforcement officer, to submit to a chemical test designated by the law enforcement officer as provided in subsection (a) of this Code section, no test shall be given; but the law enforcement officer shall report the refusal to the department. Upon the receipt of a report of the law enforcement officer that the officer had reasonable grounds to believe the arrested person had been operating or was in actual physical control of a moving vessel upon the waters of this state in violation of Code Section 52-7-12 or that such person had been operating or was in actual physical control of a moving vessel upon the waters of this state and was involved in a boating accident which resulted in serious injuries or fatalities and that the person had refused to submit to the test upon the request of the law enforcement officer, and the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length, the department shall suspend the person's privilege of operating a vessel on the waters of this state for a period of one year.

(f)(1) The law enforcement officer, acting on behalf of the department, shall personally serve the notice of intention to suspend or disqualify the privilege of operating a vessel on the waters of this state of the arrested person or other person refusing such test on such person at the time of the person's refusal to submit to a test or at the time at which such a test indicates that suspension or disqualification is required under this Code section. The officer shall forward to the department the notice of intent to suspend and the report required by subsection (d) or (e) of this Code section within ten calendar days after the date of the arrest of such person. The failure of the officer to transmit the sworn report required by this Code section within ten calendar days shall not prevent the department from accepting such report and utilizing it in the suspension of an operator's privilege as provided in this Code section.

(2) If notice has not been given by the arresting officer, the department, upon receipt of the report of such officer, shall suspend the person's privilege to operate a vessel and, by regular mail, at the last known address, notify such person of such suspension. The notice shall inform the person of the grounds of suspension, the effective date of the suspension, and the right to review. The notice shall be deemed received three days after mailing.

(g)(1) A person whose operator's privilege is suspended pursuant to this Code section shall request, in writing, a hearing within ten business days from the date of personal notice or receipt of notice sent by certified mail or statutory overnight delivery, return receipt requested, or the right to said hearing shall be deemed waived.

Within 30 days after receiving a written request for a hearing, the department shall hold a hearing as is provided in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The hearing shall be recorded. For purposes of such hearing, a copy of the report required by subsection (d) or (e) of this Code section shall be made a part of the hearing record and shall create a rebuttable presumption that the vessel being operated was a motorized vessel having ten or more horsepower or was a sailboat more than 12 feet in length.

(2) The scope of the hearing shall be limited to the following issues:

- (A)(i) Whether the law enforcement officer had reasonable grounds to believe the person was operating or in actual physical control of a moving vessel while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 52-7-12.
- (ii) Whether the person was involved in a vessel accident or collision resulting in serious injury or fatality;
- (B) Whether at the time of the request for the test or tests the officer informed the person of the person's implied consent rights and the consequence of submitting or refusing to submit to such test and:
 - (i) Whether the person refused the test; or
 - (ii) Whether a test or tests were administered and the results indicated an alcohol concentration of 0.08 grams or more or, for a person under the age of 21 years, an alcohol concentration of 0.02 grams or more; and
- (C) Whether the test or tests were properly administered by an individual possessing a valid permit issued by the Division of Forensic Sciences of the Georgia Bureau of Investigation on an instrument approved by the Division of Forensic Sciences or a test conducted by the Division of Forensic Sciences, including whether the machine at the time of the test was operated with all its electronic and operating components prescribed by its manufacturer properly attached and in good working order, which shall be required. A copy of the operator's permit showing that the operator has been trained on the particular type of instrument used and one of the original copies of the test results or, where the test is performed by the Division of Forensic Sciences, a copy of the crime lab report shall satisfy the requirements of this subparagraph.

(3) The hearing officer shall, within five calendar days after such hearing, forward a decision to the department to rescind or sustain the suspension of the person's privilege to operate a vessel on the waters of this state. If no hearing is requested within the ten business

days specified in paragraph (1) of this subsection, and the failure to request such hearing is due in whole or in part to the reasonably avoidable fault of the person, the right to a hearing shall have been waived. The request for a hearing shall not stay the suspension of the person's privilege to operate a vessel on the waters of this state; provided, however, that if the hearing is timely requested and is not held within 60 days and the delay is not due in whole or in part to the reasonably avoidable fault of the person, the suspension shall be stayed until such time as the hearing is held and the hearing officer's decision is made.

(4) In the event the person is acquitted of a violation of Code Section 52-7-12 or such charge is initially disposed of other than by a conviction or plea of nolo contendere, then the suspension shall be terminated. An accepted plea of nolo contendere shall be entered on the operator's record and shall be considered and counted as a conviction for purposes of any future violations of Code Section 52-7-12.

(h) If the suspension is sustained after such a hearing, the person whose privilege to operate a vessel on the waters of this state has been suspended under this Code section shall have a right to file for a judicial review of the department's final decision, as provided for in Chapter 13 of Title 50, the "Georgia Administrative Procedure Act"; while such appeal is pending, the order of the department shall not be stayed.

(i) Each time an approved breath-testing instrument is inspected, the inspector shall prepare a certificate which shall be signed under oath by the inspector and which shall include the following language:

"This breath-testing instrument (serial no. _____) was thoroughly inspected, tested, and standardized by the undersigned on (date _____) and all of its electronic and operating components prescribed by its manufacturer are properly attached and are in good working order."

When properly prepared and executed, as prescribed in this subsection, the certificate shall, notwithstanding any other provision of law, be self-authenticating, shall be admissible in any court of law, and shall satisfy the pertinent requirements of paragraph (1) of subsection (c) of Code Section 52-7-12 and subparagraph (g)(2)(C) of this Code section. (Code 1981, § 52-7-12.5, enacted by Ga. L. 1998, p. 672, § 2; Ga. L. 1999, p. 81, § 52; Ga. L. 2000, p. 1589, § 3; Ga. L. 2013, p. 92, § 9/SB 136.)

The 2013 amendment, effective May 15, 2013, throughout this Code section, substituted "0.08" for "0.10" and deleted "sworn" preceding "report"; in subsection

(a), substituted "initially and may subsequently require a test or tests for any substance not initially tested" for ", provided that the officer shall require a

breath test or a blood test and may require a urine test" at the end of the last sentence; rewrote subsection (b); substituted the present provisions of subsection (c) for the former provisions, which read: "Subsection (b) of this Code section shall apply to any case wherein the request for chemical testing is made regarding an offense committed on or after June 1, 1998. Subsection (b) of this Code section shall not apply to any case wherein the request for chemical testing was made regarding an offense committed prior to June 1, 1998, in which case those provisions of former Code Section 52-7-12 governing the admissibility of evidence of results of chemical testing or refusal to submit to chemical testing which were in effect at the time the offense was committed shall apply.;" inserted "years" following "21" in the middle of the second sentence of subsection (d) and in division (g)(2)(B)(ii); and added the

last sentence in paragraph (g)(1). See editor's note for applicability.

Editor's notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 8, 9, and 10 of this Act shall be known and may be cited as the "Jake and Griffin Prince BUI Law."

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-12.6. Terms of suspension; return of operating privilege; operation when suspended.

(a) Any operator's privilege to operate a vessel on the waters of this state required to be suspended under subsection (d) of Code Section 52-7-12.5 shall be suspended subject to the following terms and conditions:

(1) Upon the first suspension pursuant to subsection (d) of Code Section 52-7-12.5 within the previous five years, as measured from the dates of previous arrests for which a suspension was obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be one year. Not sooner than 120 days following the effective date of suspension, the person may apply to the department for reinstatement of his or her operator's privilege. Such privilege shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services and pays a restoration fee of \$200.00. An operator's privilege suspended pursuant to Code Section 52-7-12.5 shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00;

(2) Upon the second suspension pursuant to subsection (d) of Code Section 52-7-12.5 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of

the current arrest for which a suspension is obtained, the period of suspension shall be three years. Not sooner than 18 months following the effective date of suspension, the person may apply to the department for reinstatement of his or her operator's privilege. Such privilege shall be reinstated if such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services and pays a restoration fee of \$200.00. An operator's privilege suspended pursuant to Code Section 52-7-12.5 shall remain suspended until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services and pays a restoration fee of \$200.00;

(3) Upon the third or subsequent suspension pursuant to subsection (d) of Code Section 52-7-12.5 within five years, as measured from the dates of previous arrests for which suspensions were obtained to the date of the current arrest for which a suspension is obtained, the period of suspension shall be not less than five years and until such person submits proof of completion of a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services and pays a restoration fee of \$200.00; and

(4) Any person convicted of violating Code Section 52-7-12.2, 52-7-12.3, or 52-7-12.4 shall have his or her privilege to operate a vessel on the waters of this state suspended for three years. Such privilege shall be reinstated after the expiration of the three-year period if such person submits proof of completion of a boating education course approved by the department and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00.

(b) In all cases in which the department may return the privilege to operate a vessel on the waters of this state to an operator prior to the termination of the full period of suspension, the department may require such tests of operating skill and knowledge as it determines to be proper, and the department's discretion shall be guided by the operator's past operating record and performance and the operator's payment of a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00.

(c) Any person who operates a vessel or personal watercraft on any of the waters of this state at a time when such person's privilege to do so has been suspended shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$500.00 nor more than \$1,000.00; provided, however, that for a second and each subsequent conviction within a five-year period measured from the date of the previous arrest upon which a conviction was obtained to the date of the current arrest, such person shall be guilty of a misdemeanor of a high and aggravated

nature and shall be punished by a fine of not less than \$1,000.00 nor more than \$1,500.00. The period suspension of the privilege to operate a vessel on the waters of the state of any person convicted under this subsection shall be extended for an additional six months for each such conviction. (Code 1981, § 52-7-12.6, enacted by Ga. L. 1998, p. 672, § 3; Ga. L. 2001, p. 1000, § 2; Ga. L. 2005, p. 334, § 31-1/HB 501; Ga. L. 2013, p. 92, § 10/SB 136; Ga. L. 2014, p. 710, § 1-22/SB 298.)

The 2013 amendment, effective May 15, 2013, in subsection (a), added “and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00” throughout; in paragraph (a)(1), substituted “120 days” for “30 days” near the beginning of the second sentence; in paragraph (a)(2), substituted “18 months” for “120 days” near the beginning of the second sentence, and deleted “and” at the end; added “and pays a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00; and” at the end of paragraph (a)(3); and added paragraph (a)(4); and, at the end of subsection (b), added “and the operator’s payment of a restoration fee of \$200.00, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00”. See editor’s note for applicability.

The 2014 amendment, effective July 1, 2014, in paragraph (a)(1), deleted “for” preceding “one year” near the end of the first sentence, substituted “certified” for “approved” in the third and fourth sentences, and deleted “, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00” at the end of the third sentence; in paragraph (a)(2), deleted “for” preceding “three

years” near the end of the first sentence, substituted “his or her” for “the person’s” in the second sentence, substituted “certified” for “approved” in the third and fourth sentences, and deleted “, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00” at the end of the third and fourth sentences; and, in paragraph (a)(3), deleted “for” preceding “not less than” in the middle, substituted “certified” for “approved” near the end, and deleted “, unless such conviction was a recidivist conviction, in which case the restoration fee shall be \$500.00” at the end.

Editor’s notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General Assembly, provides, in part, that Sections 8, 9, and 10 of this Act shall be known and may be cited as the “Jake and Griffin Prince BUI Law.”

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-12.7. Suspension of privileges to operate a vessel upon waters of this state for violations of vessel laws.

(a) Except as provided for in Code Sections 52-7-12, 52-7-12.5, and 52-7-12.6, and notwithstanding criminal proceedings that may be initiated by law, upon a determination by the department that a person has violated this chapter or any rule or regulation promulgated pursuant thereto, is in noncompliance with a citation issued by another state regarding the operation of a vessel, or is suspended by another state from operating a vessel, the department may suspend such

person's privilege to operate a vessel upon the waters of this state for a period of up to two years following the determination of such violation, or if the suspension is due to noncompliance with a citation or a suspension regarding the operation of a vessel in another state, then such person's privilege to operate a vessel upon the waters of this state may remain suspended until satisfactory evidence of compliance or restoration of privileges from the other state has been received by the department as such satisfactory evidence is determined by rules and regulations of the department. Such person shall be notified of the proposed suspension personally or by a letter sent by certified mail or statutory overnight delivery at such person's last known address. The notice shall inform such person of the grounds of suspension, the effective date of the suspension, and the right to review. The notice shall be deemed received three days after mailing. The proposed suspension shall become final 30 days after issuance of notice if the proposed suspension is not appealed as provided in this Code section.

(b) Any person whose privilege is proposed for suspension shall, upon petition within 30 days of issuance of notice given as stated in subsection (a) of this Code section, have a right to a hearing before an administrative law judge appointed by the board. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board, and any party to the hearing, including the department, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) Any person who operates a vessel on any of the waters of this state at a time when such person's privilege to do so has been suspended under this Code section shall be subject to the provisions of subsection (c) of Code Section 52-7-12.6. (Code 1981, § 52-7-12.7, enacted by Ga. L. 2014, p. 624, § 1/HB 777.)

Effective date. — This Code section became effective July 1, 2014.

52-7-22. Comprehensive boating educational programs; required completion; exception.

(a) The department shall establish a comprehensive boating education program and may seek the cooperation of boatmen, the federal government, and other states. The department may accept moneys made available under federal safety programs and may issue boating certificates to persons who complete courses in boating education.

(b) Effective July 1, 2014, and except as otherwise provided by this chapter, anyone born on or after January 1, 1998, who operates any motorized vessel on the waters of this state shall complete a boating education course approved by the department prior to the operation of such vessel.

(c) A person shall be exempt from the provisions of subsection (b) of this Code section if he or she is:

(1) Licensed by the United States Coast Guard as a master of a vessel;

(2) Operating such vessel on a private lake or pond; or

(3) A nonresident who has in his or her possession proof that he or she has completed a National Association of State Boating Law Administrators approved boater education course or the equivalency from another state. (Ga. L. 1973, p. 1427, § 1; Ga. L. 2013, p. 92, § 11/SB 136.)

The 2013 amendment, effective May 15, 2013, designated the existing provisions as subsection (a); substituted the present provisions of subsection (a) for the former provisions, which read: “The department is authorized to inaugurate a comprehensive boating safety and boating education program and to seek the cooperation of boatmen, the federal government, and other states. The department may accept moneys made available under federal safety programs and may issue safety certificates to persons who complete courses in boating safety education.”; and added subsections (b) and (c). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 1/SB 136, not codified by the General

Assembly, provides, in part, that Sections 5, 6, and 11 of this Act shall be known and may be cited as the “Kile Glover Boat Education Law”.

Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

52-7-26. Penalty.

(a) Except as otherwise provided in this article, any person who violates this article or any rule or regulation promulgated hereunder shall be guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the board as provided in this article, the term “rules and regulations” means those rules and regulations of the board in force and effect on January 1, 2014.

(b) Notwithstanding subsection (c) of Code Section 17-6-12, the release of a person on his or her own recognizance for violations under Code Sections 52-7-12, 52-7-12.2, 52-7-12.3, and 52-7-12.4 shall be

prohibited. (Ga. L. 1960, p. 235, § 13; Ga. L. 1968, p. 487, § 12; Ga. L. 1973, p. 1427, § 25; Ga. L. 1983, p. 3, § 41; Ga. L. 1995, p. 236, § 3; Ga. L. 2012, p. 739, § 29/HB 869; Ga. L. 2013, p. 92, § 12/SB 136; Ga. L. 2014, p. 344, § 3/HB 783; Ga. L. 2014, p. 624, § 2/HB 777.)

The 2012 amendment. effective May 1, 2012, added the last sentence in this Code section.

The 2013 amendment. effective May 15, 2013, in the second sentence of this Code section, substituted “means” for “shall mean” in the middle, and substituted “February 5, 2013” for “January 1, 2012” at the end. See editor’s note for applicability.

The 2014 amendments. — The first 2014 amendment, effective May 1, 2014, substituted “January 1, 2014” for “February 5, 2013” at the end of this Code section (now subsection (a)). See editor’s note for applicability. The second 2014 amendment, effective July 1, 2014, designated the existing provisions of this Code section as subsection (a), and, in subsection (a), in the last sentence, twice substituted “board” for “Board of Natural Resources”, and substituted “January 1, 2014” for

“February 5, 2013”; and added subsection (b).

Editor’s notes. — Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

Ga. L. 2014, p. 344, § 5/HB 783, not codified by the General Assembly, provides: “This Act shall become effective on May 1, 2014, and shall apply to offenses occurring on or after such date.”

ARTICLE 1A

INTERSTATE BOATING VIOLATOR COMPACT

Effective date. — This article became effective July 1, 2014.

52-7-30. Compact enacted and entered into; provisions of compact.

The Interstate Boating Violator Compact is enacted into law and entered into by the State of Georgia with any and all states legally joining therein in accordance with its terms. The compact is substantially as follows:

“INTERSTATE BOATING VIOLATOR COMPACT

ARTICLE I. TITLE

This compact shall be known as the ‘Interstate Boating Violator Compact.’

ARTICLE II. DEFINITIONS

Unless the context requires otherwise, the following definitions in this article apply throughout this compact and are intended only for the implementation of this compact:

(1) 'Boating activities' means activities involving the operation of vessels on public waters.

(2) 'Boating authority' means the board, department, or division within a party state which is authorized by law to regulate the operation of vessels.

(3) 'Boating law' means laws, regulations, ordinances, or administrative rules developed and enacted to regulate boating activities.

(4) 'Boating violation' means violation of laws, regulations, ordinances, or administrative rules developed and enacted to regulate the operation of vessels.

(5) 'Citation' means summons, complaint, ticket, penalty assessment, or other official document containing an order which requires the person to respond.

(6) 'Collateral' means cash or other security deposited to secure an appearance for trial, in connection with the issuance of a citation.

(7) 'Compact manual' means the procedures, forms, and information adopted by rule by a boating authority.

(8) 'Conviction' means an adjudication of guilt or a plea of guilty or nolo contendere to the commission of an offense related to the operation of vessels which is prohibited by the law, regulation, ordinance, or administrative rule of any state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico; a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense; or the imposition of a deferred or suspended sentence by a court, magistrate, or tribunal.

(9) 'Home state' means the state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, that is the primary residence of a person.

(10) 'Issuing state' means a party state which issues a citation.

(11) 'License' means privilege to operate, permit, registration, certificate of operation, or other public document or privilege that conveys to or allows a person to operate by law, regulation, ordinance, or administrative rule of a party state.

(12) 'Officer' means individuals authorized by a party state to issue a citation for a boating violation.

(13) 'Operate' means navigating or otherwise using a vessel which is not at anchor or moored, including vessels which are being paddled, are drifting, or are being powered by machinery.

(14) 'Party state' means any state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, which enacts legislation to become a member of the Interstate Boating Violator Compact.

(15) 'Personal recognizance' means an agreement by a person made at the time of issuance of a citation that the person will comply with the conditions and options expressly stated in such citation.

(16) 'Suspension' means any revocation, denial, or withdrawal of any license.

(17) 'Vessel' means every description of watercraft, other than a seaplane on the water or a sailboard, used or capable of being used as a means of transportation on the water and specifically includes, but is not limited to, inflatable rafts and homemade watercraft.

ARTICLE III. FINDINGS, DECLARATION OF POLICY, AND PURPOSE

(a) Party states find that:

(1) Boating activities are managed for the benefit of all residents and visitors;

(2) The benefits of boating activities can be materially affected by the degree that a citation is answered, through appearance at a court, magistrate, or tribunal and the payment of fines, costs, and surcharges, if any;

(3) The management of boating activities contributes immeasurably to the aesthetic, recreational, and economic aspects of party states;

(4) Boating activities are valuable without regard to political boundaries. Therefore, all persons should be required to comply with boating laws of party states as a condition precedent to the privilege to operate;

(5) Violation of boating laws interferes with the management of boating activities and may endanger the safety of persons and property;

(6) The mobility of people who violate boating laws necessitates the maintenance of channels of communication among party states;

(7) In most instances, when an issuing state is a location other than a home state, a person:

(A) Must post collateral or bond;

(B) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(C) Is taken directly to a court, magistrate, or tribunal for an immediate appearance;

(8) The purpose of the enforcement practices described in paragraph (7) of this subsection is to ensure that a citation is answered, through appearance at a court, magistrate, or tribunal and the payment of fines, costs, and surcharges, if any, by the person who, if permitted to continue on his or her way after receiving the citation, could return to his or her home state and disregard his or her duty under the conditions and options expressly stated in the citation;

(9) In most instances, a person receiving a citation in his or her home state is permitted to accept such situation from the officer at the scene and to immediately continue on the person's way after agreeing or being instructed to comply with the conditions and options expressly stated in the citation;

(10) The practice described in paragraph (7) of this subsection causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral or bond, stand trial, or pay the fine and thus is compelled to remain in custody until some alternative arrangement can be made; and

(11) The enforcement practices described in paragraph (7) of this subsection consume an undue amount of law enforcement time.

(b) It is the policy of party states to:

(1) Promote adherence to boating laws and have a citation answered through a court, magistrate, or tribunal appearance and the payment of fines, costs, and surcharges, if any;

(2) Recognize that any revocation, denial, or withdrawal of any license by a party state should be treated the same in all states, territories, and possessions of the United States, including the District of Columbia and the Commonwealth of Puerto Rico;

(3) Allow violators to accept a citation, except as provided in subsection (b) of Article IV of this compact, and proceed on the violator's way without delay whether or not the violator is a resident where the citation was issued, provided that the home state of the violator is a party state;

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against a person whose home state was not the issuing state;

(5) Allow a home state to recognize and treat convictions recorded for its residents which occurred in a party state as if they had occurred in the home state;

(6) Extend cooperation to its fullest extent among party states for having citations which are issued in a party state answered through court, magistrate, or tribunal appearances and the payment of fines, costs, and surcharges, if any;

(7) Maximize effective use of law enforcement personnel and information; and

(8) Assist court systems in the efficient disposition of boating violations.

(c) The purposes of this compact are to:

(1) Provide a means through which party states may participate in a reciprocal program to effectuate policies enumerated in subsection (b) of this article in a uniform and orderly manner; and

(2) Provide for the fair and impartial treatment of a person issued a citation within a party state in recognition of such person's right of due process and the sovereign status of such party state.

ARTICLE IV. PROCEDURES FOR ISSUING STATE

(a) A citation shall be issued in the same manner as if the person receiving such citation was a resident of the issuing state and shall not require the person to post collateral, subject to the exceptions contained in subsection (b) of this article, if the officer receives the person's personal recognizance.

(b) Personal recognizance is acceptable if:

(1) It is not prohibited by local law or the compact manual; and

(2) The violator provides adequate proof of his or her identification to the officer.

(c) Upon conviction or failure of a person to comply with the conditions and options expressly stated in a citation, the appropriate official shall report the conviction or failure to comply to the boating authority of the party state in which the citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or failure to comply as required by subsection (c) of this article, the boating authority of the issuing state shall transmit to the boating authority of the home state

the information in a form and content as contained in the compact manual.

ARTICLE V. PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the conditions and options expressly stated in a citation from the boating authority of the issuing state, the boating authority of the home state shall notify the violator, shall initiate a suspension in accordance with the home state's suspension procedures, and shall suspend the violator's license until satisfactory evidence of compliance with the conditions and options expressly stated in such citation has been furnished by the issuing state to the boating authority of the home state. Due process safeguards shall be accorded.

(b) Upon receipt of a report of conviction from the boating authority of the issuing state, the boating authority of the home state shall enter the conviction in its records and shall treat the conviction as if it occurred in the home state for the purposes of a suspension.

(c) The boating authority of a home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

ARTICLE VI. RECIPROCAL RECOGNITION OF SUSPENSION

(a) A party state shall recognize a suspension of any person by any state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, as if the violation on which the suspension is based occurred in such party state and could have been the basis for suspension in such party state.

(b) Each party state shall communicate suspension information to other party states in a form and content as contained in the compact manual.

ARTICLE VII. APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing in this compact shall be construed to affect the right of a party state to apply any of its boating laws to a person or circumstance or to invalidate or prevent any agreement or other cooperative arrangements between a party state and any other state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, concerning boating law enforcement.

ARTICLE VIII. COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of boating compact

administrators is established. The board of boating compact administrators shall be composed of one representative from each party state to be known as the boating compact administrator. The boating compact administrator shall be appointed by the head of the boating authority and shall serve and be subject to removal in accordance with the laws of the state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, the boating compact administrator represents. A boating compact administrator may provide for the discharge of his or her duties and the performance of his or her functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of the alternate's identity has been given to the board of boating compact administrators.

(b) Each boating compact administrator is entitled to one vote. No action of the board of boating compact administrators is binding unless taken at a meeting at which a majority of the total number of votes on such board is cast in favor thereof. Action by the board of boating compact administrators shall be only at a meeting at which a majority of party states are represented.

(c) The board of boating compact administrators shall elect annually, from its membership, a chairperson and vice chairperson.

(d) The board of boating compact administrators shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of any party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board of boating compact administrators may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, the United States, or any governmental agency and may receive, utilize, and dispose of the same.

(f) The board of boating compact administrators may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation, or private nonprofit organization or institution.

(g) The board of boating compact administrators shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to the action of the board of boating compact administrators shall be contained in the compact manual.

ARTICLE IX. ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states, territories, or possessions of the United States,

including the District of Columbia and the Commonwealth of Puerto Rico.

(b)(1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, and submitted to the chairperson of the board of boating compact administrators.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(A) The authority by which the state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, is empowered to become a member of this compact;

(B) Agreement to comply with the terms and provisions of this compact; and

(C) That compact entry is with party states.

(3) The effective date of becoming a member of this compact shall be specified by the applying state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, but shall not be less than 60 days after notice has been given by the chairperson of the board of boating compact administrators or by the secretary of such board to the party states that the resolution from the applying state, territory, or possession of the United States, including the District of Columbia and the Commonwealth of Puerto Rico, has been received.

(c) Party states may withdraw from this compact by official written notice to party states, but a withdrawal shall not take effect until 90 days after notice of withdrawal is given. The notice shall be directed to the boating compact administrator of each party state. No withdrawal shall affect the validity of this compact as to the party states.

ARTICLE X. AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of boating compact administrators and may be initiated by party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective after this compact has been amended by law by a party state.

ARTICLE XI. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated in it. The provisions of this compact are severable, and

if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of a party state or the United States Constitution or the applicability of this compact to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected by it. If this compact is held contrary to the constitution of a party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters." (Code 1981, § 52-7-30, enacted by Ga. L. 2014, p. 624, § 3/HB 777.)

Editor's notes. — Ga. L. 2014, p. 624, § 3/HB 777 enacts the Interstate Boating Violator Compact. That Act became effective on July 1, 2014. As of May 16, 2014,

when South Carolina adopted the compact, the adoption contingency required pursuant to Article IX of the compact has been met.

52-7-31. Administration of compact; reciprocal suspension when operating privileges suspended in party state; Board of Natural Resources to publish rules and regulations; creation of compact manual.

(a) The commissioner of natural resources shall appoint an Interstate Boating Violator Compact administrator for this state. Such administrator shall serve at the pleasure of the commissioner.

(b) The department may suspend the operating privileges of any person to operate a vessel upon the waters of this state as provided for in Code Section 52-7-12.7 to the extent that such person's privileges to operate a vessel upon the waters of a state have been suspended when such state is a party state, as such term is defined in Code Section 52-7-30.

(c) The Board of Natural Resources shall make and publish such rules and regulations, including the creation of the compact manual, not inconsistent with law, as it deems necessary to carry out the purposes of this article. (Code 1981, § 52-7-31, enacted by Ga. L. 2014, p. 624, § 3/HB 777.)

ARTICLE 2

DISPLAYING OF WATERCRAFT INFORMATION

52-7-51. Penalty.

(a) Any person who violates this article or any rules and regulations issued hereunder shall be guilty of a misdemeanor. For purposes of establishing criminal violations of the rules and regulations promulgated by the Board of Natural Resources as provided in this article, the term "rules and regulations" means those rules and regulations of the Board of Natural Resources in force and effect on January 1, 2014.

(b) Failure to affix a proper capacity plate shall constitute a separate violation for each watercraft with respect to which such failure occurs. (Ga. L. 1971, p. 419, § 12; Ga. L. 2012, p. 739, § 30/HB 869; Ga. L. 2013, p. 92, § 13/SB 136; Ga. L. 2014, p. 344, § 4/HB 783.)

The 2012 amendment, effective May 1, 2012, added the last sentence in subsection (a).

The 2013 amendment, effective May 15, 2013, in the second sentence of subsection (a), substituted “means” for “shall mean” in the middle, and substituted “February 5, 2013” for “January 1, 2012” at the end. See editor’s note for applicability.

The 2014 amendment, effective May 1, 2014, substituted “January 1, 2014” for “February 5, 2013” at the end of subsection (a). See editor’s note for applicability.

Editor’s notes. — Ga. L. 2013, p. 92, § 14/SB 136, not codified by the General Assembly, provides, in part, that the

amendment of this Code section by that Act shall apply to all offenses occurring on and after May 15, 2013; provided, however, that for purposes of determining the number of prior convictions or pleas of nolo contendere pursuant to the felony provisions of paragraph (4) of subsection (m) of Code Section 52-7-12, only those offenses for which a conviction or a plea of nolo contendere is obtained on or after May 15, 2013, shall be considered.

Ga. L. 2014, p. 344, § 5/HB 783, not codified by the General Assembly, provides: “This Act shall become effective on May 1, 2014, and shall apply to offenses occurring on or after such date.”

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting not required. — Misdemeanor offenses arising under O.C.G.A. § 52-7-51 are offenses for which those

charged are not to be fingerprinted. 2012 Op. Att’y Gen. No. 12-6.

ARTICLE 3

ABANDONED VESSELS

52-7-75. (For effective date, see note.) Public sale of vessel; disposition of excess proceeds.

(a)(1) (For effective date, see note.) As used in this subsection, the term “public sale” means a sale:

(A) Held at a place reasonably available to persons who might desire to attend and submit bids;

(B) At which those attending shall be given the opportunity to bid on a competitive basis;

(C) At which the sale, if made, shall be made to the highest and best bidder; and

(D) Except as otherwise provided in Title 11 for advertising or dispensing with the advertising of public sales, of which notice is given by advertisement once a week for two weeks in the newspaper in which the sheriff’s advertisements are published in the

county where the sale is to be held, and which notice shall state the day and hour, between 9:00 A.M. and 5:00 P.M., and the place of sale and shall briefly identify the goods to be sold.

(2) Upon order of the court, the person holding the lien on the abandoned vessel shall be authorized to sell such vessel at public sale.

(b) After satisfaction of the lien, the person selling such vessel shall turn the remaining proceeds of such sale, if any, over to the clerk of the court. (Code 1981, § 52-7-75, enacted by Ga. L. 1989, p. 613, § 1; Ga. L. 2015, p. sb0065, § 3C-6/SB 65.)

Delayed effective date. — Subsection (a), as set out above, becomes effective January 1, 2016. For version of subsection (a) in effect until January 1, 2016, see the 2015 amendment note.

The 2015 amendment, effective January 1, 2016, added paragraph (a)(1), redesignated the existing language of subsection (a) as paragraph (a)(2), and deleted “, as defined by Code Section 11-1-201” at the end of paragraph (a)(2).

Editor's notes. — Ga. L. 2015, p. sb65, § 1-1/SB 65, not codified by the General

Assembly, provides: “(a) This Act shall be known and may be cited as the ‘Debtor-Creditor Uniform Law Modernization Act of 2015.’

“(b) To promote consistency among the states, it is the intent of the General Assembly to modernize certain existing uniform laws promulgated by the Uniform Law Commission affecting debtor and creditor rights, responsibilities, and relationships and other federally recognized laws affecting such rights, responsibilities, and relationships.”

TITLE 53

WILLS, TRUSTS, AND ADMINISTRATION OF ESTATES

Chap.

5. Probate, 53-5-1 through 53-5-71.
11. Proceedings in Probate Court, 53-11-1 through 53-11-11.

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 1

IN GENERAL

53-1-1. Short title; effective date of provisions.

JUDICIAL DECISIONS

Cited in *In re Estate of Wade*, 331 Ga. App. 535, 771 S.E.2d 214 (2015).

53-1-2. Definitions.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary administration, see 64 *Merger L. Rev.* 325 (2012).

53-1-5. Right of individual who feloniously and intentionally kills or conspires to kill to inherit.

Law reviews. — For article, “Killers Shouldn’t Inherit from their Victims - Or Should They?,” see 48 *Ga. L. Rev.* 145 (2013). For annual survey on wills, trusts, guardianships, and fiduciary administration, see 66 *Merger L. Rev.* 231 (2014).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *O’Brien v. Bruscato*, 289 Ga. 739, 715 S.E.2d 120 (2011).

CHAPTER 2

DESCENT AND DISTRIBUTION

ARTICLE 1

GENERAL PROVISIONS

53-2-1. Rules of inheritance when decedent dies without will; effect of abandonment of child.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 64 Mercer L. Rev. 325 (2012).

JUDICIAL DECISIONS

Must be an interested person to have standing to offer will to probate.

— Trial court erred by denying two children's motion to dismiss the petition to probate filed by the decedent's brother because the brother lacked standing to offer the will to probate under O.C.G.A. § 53-5-2 because the brother was not an interested person as the brother was not a judgment creditor of an heir of the decedent, a purchaser from an heir, a person claiming under an earlier will, or an administrator appointed for the decedent before discovery of the will. Ray v. Stevens, 295 Ga. 895, 764 S.E.2d 809 (2014).

Virtual adoption. — Trial court erred by granting a biological son's motion for partial summary judgment on the issue of virtual adoption asserted by the purported adopted daughter because the court clearly erred by misinterpreting the requirement of partial performance of the agreement to adopt and erroneously concluded that an established virtual adoption can be undone by showing that the purported adopted daughter formed a relationship with the child's natural father after learning of his existence when a teenager. Sanders v. Riley, 296 Ga. 693, 770 S.E.2d 570 (2015).

53-2-7. Vesting of title to property; right to possession.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 64 Mercer L. Rev. 325 (2012).

ARTICLE 5

ESCHEAT

Law reviews. — For comment, "Unwrapping Escheat: Unclaimed Property

Laws and Gift Cards," see 60 Emory L.J. 971 (2011).

CHAPTER 3

YEAR'S SUPPORT

53-3-1. Preference and entitlement.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION GENERALLY

1. IN GENERAL

General Consideration

Cited in Cabrel v. Lum, 289 Ga. 233, 710 S.E.2d 810 (2011).

Application Generally

1. In General

Denial of spouse's petition for year's support improper. — Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked

the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. *In re Mahmoodzadeh*, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

53-3-5. Filing of petition.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 65 Mercer L. Rev. 295 (2013).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

APPLICATION GENERALLY

1. IN GENERAL

General Consideration

Cited in Cabrel v. Lum, 289 Ga. 233, 710 S.E.2d 810 (2011).

Application Generally

1. In General

Denial of spouse's petition for year's support improper. — Probate

court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property

were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing

upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. *In re Mahmoodzadeh*, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

53-3-6. Issuance of citation and publication of notice; mailing of petition to tax commissioner.

JUDICIAL DECISIONS

Year's support.

Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; de-

spite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the petition. *In re Mahmoodzadeh*, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

53-3-7. Hearing and determination.

JUDICIAL DECISIONS

Denial of spouse's petition for year's support improper. — Probate court erred by allowing the objections of a bank and a decedent's parents solely on the basis of adverse title and by denying a year's support to the widow when the widow failed to meet the resulting burden of proof because the probate court lacked the jurisdiction under Ga. Const. 1983, Art. VI, Sec. III, Para. I and O.C.G.A. § 15-9-30 to determine that the relevant money-market account and real property were not part of the estate; despite the jurisdictional limitation and the lack of an appropriate objection, the probate court proceeded to conduct a hearing as to the amount necessary for the widow's support, thereby inappropriately placing upon the widow a burden of proof that was contrary to O.C.G.A. § 53-3-7(a) and otherwise lacking in the absence of the jurisdictionally defective objections to the

petition. *In re Mahmoodzadeh*, 314 Ga. App. 383, 724 S.E.2d 797 (2012).

Superior court erred in setting aside the year's support award for failure to provide evidence of the amount sufficient to constitute a year's support because the only issue properly before the superior court on appeal from the probate court under O.C.G.A. § 5-3-29 was whether or not an objection had been made to the petitioner's petition for year's support, and because the superior court found that no objection had been made to the petition for year's support, the court erred in placing the burden of proof to show the amount sufficient for year's support upon the petitioner as the language of O.C.G.A. § 53-3-7(c) indicated that the petitioner shouldered that burden of proof only once an objection had been made. *Garren v. Garren*, 316 Ga. App. 646, 730 S.E.2d 123 (2012).

53-3-19. Conveyance or encumbrance by surviving spouse of property set aside; effect.

JUDICIAL DECISIONS

Interest in year's support property.

— Trial court did not err in refusing to set aside as void any sale of year's support property by a mother because the question of the extent of the daughters' interests in the year's support property was resolved in a partitioning judgment, which awarded the daughters their share of the

year's support property; because the partitioning judgment was not appealed, the daughters could not complain that the daughters had a greater interest in the property than that which was awarded. *Cabrel v. Lum*, 289 Ga. 233, 710 S.E.2d 810 (2011).

53-3-20. Conveyance or encumbrance by surviving spouse of property set aside; approval of probate court.

JUDICIAL DECISIONS

Interest in year's support property.

— Trial court did not err in refusing to set aside as void any sale of year's support property by a mother because the question of the extent of daughters' interests in the year's support property was resolved in a partitioning judgment, which awarded the daughters their share of the year's

support property; because the partitioning judgment was not appealed, the daughters could not complain that the daughters had a greater interest in the property than that which was awarded. *Cabrel v. Lum*, 289 Ga. 233, 710 S.E.2d 810 (2011).

CHAPTER 4

WILLS

ARTICLE 1

GENERAL PROVISIONS

53-4-1. Power of testator.

JUDICIAL DECISIONS

Application of pre-1998 probate code. — Trial court did not err when the court applied the law in place before the 1998 probate code was adopted to determine whether a husband and wife had a contract not to revoke their joint and mutual will because the issue was not the propriety of the devises in the will but

whether the husband and wife had a contract not to revoke the will; the 1998 probate code only applies to contracts entered into on or after January 1, 1998, so it would not apply to any contract allegedly made in 1980. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

53-4-2. When will takes effect.

JUDICIAL DECISIONS

Application of pre-1998 probate code. — Trial court did not err when the court applied the law in place before the 1998 probate code was adopted to determine whether a husband and wife had a contract not to revoke their joint and mutual will because the issue was not the propriety of the devises in the will but

whether the husband and wife had a contract not to revoke the will; the 1998 probate code only applies to contracts entered into on or after January 1, 1998, so it would not apply to any contract allegedly made in 1980. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

53-4-3. Determination whether instrument is will.

JUDICIAL DECISIONS

Directed verdict denial proper. — In a will contest action between a goddaughter and a first cousin, the trial court properly denied the challenging first cousin's motion for a directed verdict because the testimony of the goddaughter, viewed in her favor, supported the finding both that the testatrix intended the two docu-

ments at issue together to express her desired dispository scheme and that the two documents were presented together for attestation; thus, the evidence supported the jury's finding that the two documents together did in fact create a valid will. *Lee v. Swain*, 291 Ga. 799, 733 S.E.2d 726 (2012).

ARTICLE 2

TESTAMENTARY CAPACITY

53-4-11. Decided and rational desire; incapacity to contract; insanity; advanced age or eccentricity.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION PLEADING AND PRACTICE

General Consideration

Sufficient evidence of revocation of will. — Evidence presented at trial was sufficient for the trial court to find, as a matter of fact, that the decedent had the necessary mental capacity to revoke a 1988 will because the record showed that the relevant circumstances had changed significantly in the 16 years since the execution of the 1988 will, giving the decedent good reasons to want to revoke the old will such as several people listed in the 1988 will having died, including both of

the co-executors named. *Mosley v. Lancaster*, 770 S.E.2d 873, No. S14A1914, 2015 Ga. LEXIS 195 (2015).

Pleading and Practice

Evidence of testator's mental condition, etc.

Trial court properly denied a granddaughter's motion for judgment notwithstanding the verdict following a jury verdict upholding the last will and testament of her grandmother giving the bulk of her estate to her grandson because a video-

Pleading and Practice (Cont'd)

tape of the execution of the will, the will's witnesses, and other evidence established

the grandmother's testamentary capacity. *Patterson-Fowlkes v. Chancey*, 291 Ga. 601, 732 S.E.2d 252 (2012).

53-4-12. Freedom of volition.**JUDICIAL DECISIONS****ANALYSIS****GENERAL CONSIDERATION****ESSENTIAL ELEMENTS OF UNDUE INFLUENCE****FRAUD****PLEADING AND PRACTICE****2. PROOF****General Consideration**

Cited in *Mosley v. Lancaster*, 770 S.E.2d 873, No. S14A1914, 2015 Ga. LEXIS 195 (2015).

Essential Elements of Undue Influence**Undue influence is a question of fact requiring jury consideration.**

Trial court properly denied the motions for a directed verdict and for a judgment notwithstanding the verdict filed by the executors of a will and trust because there was sufficient evidence to support the jury's finding that the documents were invalid as a product of undue influence based on the executors taking complete control of the elderly testator and isolating the testator from the testator's sons, as well as substituting desires and having the testator sign a new will and trust, which benefitted the executors and excluded the testator's wife and sons. *Davison v. Hines*, 291 Ga. 434, 729 S.E.2d 330 (2012).

Will propounder was not entitled to a directed verdict in a will caveat as the evidence established a question for the jury on the issue of undue influence because there was more than merely an opportunity for the propounder to influence the testator; there was also evidence of the testator's diminished mental facul-

ties and an established confidential relationship between the propounder and the testator. *Odom v. Hughes*, 293 Ga. 447, 748 S.E.2d 839 (2013).

Fraud**Fraud must affect testator's plan in making will.**

Trial court properly granted a will beneficiary summary judgment on the issue of fraud because there was no evidence in the record that would create a genuine issue of material fact as to fraud since the alleged two misrepresentations were not shown to have been relied upon by the testator when the will was created. *Johnson v. Burrell*, 294 Ga. 301, 751 S.E.2d 301 (2013).

Pleading and Practice**2. Proof****Mere confidential relationship insufficient as proof of undue influence.**

Trial court properly granted a will beneficiary summary judgment on the issue of undue influence because the caveators failed to come forward with any evidence that the beneficiary attempted to influence the making or the contents of the testator's will despite the existence of a confidential relationship. *Johnson v. Burrell*, 294 Ga. 301, 751 S.E.2d 301 (2013).

ARTICLE 3

EXECUTION AND ATTESTATION

53-4-20. Required writing; signing; witnesses; codicil.

Editor's notes. — The general provisions concerning the competency of witnesses, referred to in the Comment, are now found at O.C.G.A. § 24-6-601.

COMMENT

This section carries forward former OCGA Secs. 53-2-40 and 53-2-43, adding the concept from Georgia case law that a testator may sign by mark. Former OCGA Sec. 53-2-43(b) is clarified, stating that no other individual may sign a witness's name to the will. (For general provisions as to the competency of witnesses, see OCGA Sec. 24-9-1 et seq.) This section also carries forward the concept from former OCGA Sec. 53-2-5 that a codicil must be executed with the same formality as a will.

53-4-21. Knowledge of contents of will by testator.

JUDICIAL DECISIONS

Presumption testator knew contents of will.

Because a parent's will was plain and unambiguous and did not contain a residue clause, the lapsed gift of the residue passed to the parent's three daughters by intestacy according to O.C.G.A.

§ 53-4-65(b); although the parent expressed disappointment with two daughters and left them specific bequests of \$10 each, the parent did not express an intent to disinherit the daughters. *Banner v. Vandestord*, 293 Ga. 654, 748 S.E.2d 927 (2013).

53-4-22. Competency of witness.

Cross references. — Competency of witnesses generally, § 24-6-601 et seq.

Editor's notes. — The general provisions concerning the competency of witnesses, referred to in the Comment, are now found at O.C.G.A. § 24-6-601.

COMMENT

Subsection (a) carries over the concept of competency of witnesses from former OCGA Sec. 53-2-45, adding that the witness to a will must be age 14 or over. (Case law indicates that an individual who is age 14 or over is presumed competent to witness a will.) The competency of witnesses is defined in OCGA Sec. 24-9-1 and Article 1 of Title 9 of the Code. Subsection (b) carries forward the concept of former OCGA Sec. 53-2-44 that the witness must be competent only at the time of attestation, not necessarily at the time of probate.

53-4-23. Testamentary gift to witness or witness's spouse.

Cross references. — Competency of witnesses generally, § 24-6-601 et seq.

ARTICLE 4

JOINT OR MUTUAL WILLS

53-4-30. Contract concerning succession.**JUDICIAL DECISIONS****No express written contract found.**

Decedent's son, grandson, and friend did not prove a written will contract meeting the requirements of O.C.G.A. § 53-4-30 because handwritten memorandum discovered after the decedent's death did not reflect the consideration the son, grandson, and friend described as part of the will contract and did not embody any promise on the decedent's part, but the notes simply stated the decedent's wishes as to the disposal of property and the handling of the estate; the signature is, in fact, a mandatory statutory requirement under O.C.G.A. § 53-4-30. *Newton v. Lawson*, 313 Ga. App. 29, 720 S.E.2d 353 (2011).

Decedent's son, grandson, and friend did not prove a written will contract meeting the requirements of O.C.G.A. § 53-4-30 because the decedent's 2000 will could not be relied upon to satisfy O.C.G.A. § 53-4-30 since it was not a written contract promising to make a will for valuable consideration and was revoked upon the decedent's execution of a will in 2004; the 2000 will was a revocable will reflecting the decedent's testamentary intent at the time the decedent executed the will, and the decedent changed the testamentary intent when the decedent executed the 2004 will. *Newton v. Lawson*, 313 Ga. App. 29, 720 S.E.2d 353 (2011).

53-4-31. Definitions.**JUDICIAL DECISIONS****ANALYSIS****MUTUAL WILLS****Mutual Wills**

Joint and mutual will. — Trial court did not err when the court concluded that the will of a husband and wife was joint and mutual and that the husband and wife had an enforceable contract not to revoke that will because the husband and wife each agreed to give the other certain described real and personal property as valuable consideration if one or the other survived, and they also agreed that if they

died simultaneously, or at the survivor's death, that the residue of the estate would go to their four children, all of whom were biologically the husband's children and two of whom were biologically the wife's children; when the husband died the wife, as the survivor, benefitted from the joint and mutual will when she probated it as the husband's last will and testament and conveyed the husband's entire estate to herself. *Davis v. Parris*, 289 Ga. 201, 710 S.E.2d 757 (2011).

ARTICLE 5

REVOCATION AND REPUBLICATION

53-4-44. Destruction or obliteration of will or material portion thereof.

JUDICIAL DECISIONS

ANALYSIS

PLEADING AND PRACTICE

4. DOCTRINE OF DEPENDENT RELATIVE REVOCATION

Pleading and Practice

4. Doctrine of Dependent Relative Revocation

Failure to apply doctrine of dependent relative revocation. — Trial court did not err by failing to apply the doctrine of dependent relative revocation to revive the decedent's 1988 will because based on the attorney's trial testimony, the trial

court properly found that the markings on the original 1988 will that the decedent brought to a June 2004 meeting with the attorney were so extensive that it could not be determined, even by an experienced lawyer, what decedent intended to remove and what, if anything, was intended to remain. *Mosley v. Lancaster*, 770 S.E.2d 873, No. S14A1914, 2015 Ga. LEXIS 195 (2015).

53-4-46. Presumption of intent.

JUDICIAL DECISIONS

ANALYSIS

GENERAL PROVISIONS

PROOF REQUIRED

PRESUMPTION OF REVOCATION

2. REBUTTAL

General Provisions

Construction. — To the extent *Lyons v. Bloodworth*, 199 Ga. 44 (1945) involves a burden of proof other than preponderance of the evidence to overcome the presumption of revocation, it has been superseded by the Georgia General Assembly's 1996 enactment of O.C.G.A. § 54-4-46(b), specifying preponderance of the evidence as the burden of proof. *Johnson v. Fitzgerald*, 294 Ga. 160, 751 S.E.2d 313 (2013).

Proof Required

Proof provided to admit copy. — Probate court properly admitted a copy of a will for probate because the propounding executor had rebutted the presump-

tion of revocation under O.C.G.A. § 53-4-46 with evidence of a trust agreement that was named in the will and by evidence of prior wills, which showed a consistent testamentary scheme. *Johnson v. Fitzgerald*, 294 Ga. 160, 751 S.E.2d 313 (2013).

Presumption of Revocation

2. Rebuttal

Presumption not rebutted. — Testator's fiance failed to rebut the presumption that the testator destroyed and intended to revoke the testator's original will created by O.C.G.A. § 53-4-46(a) although the testator's relationship with the testator's daughter was strained be-

Presumption of Revocation (Cont'd)
2. Rebuttal (Cont'd)

cause the testator had control of the will, the lock box in which the will was kept had been broken into, and the testator had expressed dissatisfaction with the testator's fiance. *Britt v. Sands*, 294 Ga. 426, 754 S.E.2d 58 (2014).

Trial court did not err by failing to apply the doctrine of dependent relative revocation to revive the decedent's 1988 will

because based on the attorney's trial testimony, the trial court properly found that the markings on the original 1988 will that the decedent brought to a June 2004 meeting with the attorney were so extensive that it could not be determined, even by an experienced lawyer, what the decedent intended to remove and what, if anything, was intended to remain. *Mosley v. Lancaster*, 770 S.E.2d 873, No. S14A1914, 2015 Ga. LEXIS 195 (2015).

ARTICLE 6

CONSTRUCTION OF WILL; TESTAMENTARY GIFTS

53-4-55. Construction of wills; intention of testator.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Wilkes v. Fraser*, 324 Ga. App. 642, 751 S.E.2d 455 (2013).

53-4-64. Death of beneficiary before will executed or before death of testator.

Law reviews. — For note, "Vesting Title in a Murderer: Where is the Equity in the Georgia Supreme Court's Interpre-

tation of the Slayer Statute in Levenson?", see 45 Ga. L. Rev. 877 (2011).

53-4-65. Disposition of lapsed or void testamentary gift of residuum.

JUDICIAL DECISIONS

Lapsed gift passed by intestacy rules. — Because a parent's will was plain and unambiguous and did not contain a residue clause, the lapsed gift of the residue passed to the parent's three daughters by intestacy according to O.C.G.A. § 53-4-65(b); although the par-

ent expressed disappointment with two daughters and left them specific bequests of \$10 each, the parent did not express an intent to disinherit the daughters. *Banner v. Vandeford*, 293 Ga. 654, 748 S.E.2d 927 (2013).

53-4-66. Ademption or destruction of specific testamentary gift.

JUDICIAL DECISIONS

ANALYSIS

ADEMPTION RULE

Ademption Rule

Devise adeemed.

Although a testator failed to form a limited partnership prior to the testator's death, such that a devise of member cer-

tificates was without effect and was adeemed, the business property that was devised to beneficiaries was not limited to that entity. *Simmons v. England*, 323 Ga. App. 251, 746 S.E.2d 862 (2013).

CHAPTER 5

PROBATE

Article 3 Solemn Form

Sec.

53-5-21. Procedure.

ARTICLE 1

GENERAL PROVISIONS

53-5-2. Right to offer will for probate.

JUDICIAL DECISIONS

Interested persons only have right to file caveat. — Georgia Supreme Court has found that only those who have some interest in the will or estate which will be affected or concluded by probate have a right to file a caveat. Georgia cases have recognized those interested persons with standing to caveat a will to include heirs, a purchaser from an heir, a judgment creditor of an heir, an administrator appointed for the testator before the discovery of the will, and persons claiming under an earlier will. *Ray v. Stevens*, 295 Ga. 895, 764 S.E.2d 809 (2014).

Must be an interested person. — Trial court erred by denying two children's motion to dismiss the petition to probate filed by the decedent's brother because the

brother lacked standing to offer the will to probate under O.C.G.A. § 53-5-2 since the brother was not an interested person as the brother was not a judgment creditor of an heir of the decedent, a purchaser from an heir, a person claiming under an earlier will, or an administrator appointed for the decedent before discovery of the will. *Ray v. Stevens*, 295 Ga. 895, 764 S.E.2d 809 (2014).

General creditor not an interested person. — Being a general creditor of an estate would not give a person standing to offer a will for probate; thus, a general creditor is not an interested person for purposes of O.C.G.A. § 53-5-2. *Ray v. Stevens*, 295 Ga. 895, 764 S.E.2d 809 (2014).

ARTICLE 3
SOLEMN FORM

53-5-20. Conclusiveness.

Cross references. — Subscribing witness's testimony, § 24-9-903.

53-5-21. Procedure.

(a) A will may be proved in solemn form after due notice, upon the testimony of all the witnesses in life and within the jurisdiction of the court, or by proof of their signatures and that of the testator as provided in Code Section 53-5-23. The testimony of only one witness shall be required to prove the will in solemn form if no caveat is filed. If a will is self-proved, compliance with signature requirements and other requirements of execution is presumed subject to rebuttal without the necessity of the testimony of any witness upon filing the will and affidavit annexed or attached thereto.

(b) The petition to probate a will in solemn form shall set forth the full name, the place of domicile, and the date of death of the testator; the mailing address of the petitioner; the names, ages or majority status, and addresses of the surviving spouse and of all the other heirs, stating their relationship to the testator; and whether, to the knowledge of the petitioner, any other proceedings with respect to the probate of another purported will of the testator are pending in this state and, if so, the names and addresses of the propounders and the names, addresses, and ages or majority status of the beneficiaries under the other purported will. If a testamentary guardian is being appointed in accordance with subsection (b) of Code Section 29-2-4, the names and mailing addresses of any persons required to be served with notice pursuant to such Code section shall be provided by the petitioner. In the event full particulars are lacking, the petition shall state the reasons for any omission. The petition shall conclude with a prayer for issuance of letters testamentary. If all of the heirs acknowledge service of the petition and notice and shall in their acknowledgment assent thereto, and if there are no other proceedings pending in this state with respect to the probate of another purported will of the decedent, the will may be probated and letters testamentary thereupon may issue without further delay; provided, however, that letters of guardianship shall only be issued in accordance with Code Section 29-2-4. (Code 1981, § 53-5-21, enacted by Ga. L. 1996, p. 504, § 10; Ga. L. 2014, p. 780, § 4-2/SB 364.)

The 2014 amendment, effective January 1, 2015, in subsection (b), added the second sentence, inserted “testamentary” near the end of the last sentence, and added the proviso at the end.

Cross references. — Subscribing witness’s testimony, § 24-9-903.

53-5-22. Notice.

Cross references. — Subscribing witness’s testimony, § 24-9-903.

ARTICLE 4

WITNESSES; SETTLEMENT AGREEMENT; EXPENSES

53-5-23. Methods of examining witnesses; photocopy of will.

JUDICIAL DECISIONS

Subscribing witnesses could testify by written interrogatories.

Directed verdict for the caveators of a will was improper, although the witnesses to the will had died, given prior testimony from one witness by interrogatory and

deposition that the decedent, who was blind, had signed the will voluntarily and knew it was the decedent’s will; under O.C.G.A. § 53-5-23(a), this evidence presented a jury question. *Ammons v. Clouds*, 295 Ga. 225, 758 S.E.2d 282 (2014).

53-5-24. Unavailability of subscribing witnesses.

JUDICIAL DECISIONS

Proof of signature from lawyer and paralegal. — Although the witnesses to a will were deceased, the lawyer who prepared the will and the lawyer’s paralegal were not permitted to testify that the

signature on the will was the decedent’s because the lawyer and paralegal did not demonstrate a familiarity with the decedent’s signature. *Ammons v. Clouds*, 295 Ga. 225, 758 S.E.2d 282 (2014).

ARTICLE 5

FOREIGN AND OUT-OF-STATE WILLS; NONDOMICILIARIES

PART 1

GENERAL PROVISIONS

53-5-33. Requisites for admission to ancillary probate.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

53-5-35. Muniments of title to realty.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

PART 2**FOREIGN PERSONAL REPRESENTATIVES****53-5-43. Evidence of authority.**

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this

Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 6**ADMINISTRATORS AND PERSONAL
REPRESENTATIVES****ARTICLE 1****GENERAL PROVISIONS****53-6-2. Executor de son tort.****JUDICIAL DECISIONS****Accountability as executor and
holder of life estate.**

Trial court erred to the extent the court applied the presumption in O.C.G.A. § 7-1-813(a) to funds which the executors withdrew from the original joint accounts and placed in accounts solely in their name because to the extent they took funds in excess of their ownership from a joint account containing funds owned by two beneficiaries and placed those funds in an account in their name, they severed

the joint account relationship and extinguished the presumption that the funds belonged to them. *Shirley v. Sailors*, 329 Ga. App. 850, 766 S.E.2d 201 (2014).

**Alteration of compensatory award
after appeal.** — Trial court erred when the court altered the award to the decedent’s estate of compensatory damages, under O.C.G.A. § 53-6-2, after the executor’s unsuccessful first appeal. *In re Estate of Tapley*, 312 Ga. App. 234, 718 S.E.2d 92 (2011).

ARTICLE 7

COMPENSATION

53-6-60. Amount.

JUDICIAL DECISIONS

Issues of fact existed as to excessiveness of fee. — Trial court correctly concluded that questions of fact remained as to whether a trustee collected excessive executor's fees under O.C.G.A. § 53-6-60 because the record showed that the \$425,000 the trustee collected in executor's fees for the administration of the

estate was based on calculations by accountants; however, the beneficiary presented evidence that the trustee may have miscalculated the earned commission under § 53-6-60 in excess of \$184,307. *Hasty v. Castleberry*, 293 Ga. 727, 749 S.E.2d 676 (2013).

CHAPTER 7

ADMINISTRATION OF ESTATES GENERALLY

ARTICLE 1

POWERS AND DUTIES GENERALLY

53-7-5. Powers, duties, and liabilities if more than one personal representative; safe deposit boxes or receptacles.

JUDICIAL DECISIONS

Cited in *In re Estate of Wade*, 331 Ga. App. 535, 771 S.E.2d 214 (2015).

ARTICLE 3

INVENTORY

53-7-30. Filing and contents.

JUDICIAL DECISIONS

Exemption from filing inventory. — Because an estate's executors were exempted by the terms of the testator's will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file

such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors were not unaccountable for injury based on the exemption. *In re Estate of Willis*, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

53-7-33. Power of testator to dispense with making inventory.

JUDICIAL DECISIONS

Statute did not provide cause of action to creditor of the estate. — Because an estate's executors were exempted by the terms of the testator's will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file

such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors were not unaccountable for injury based on the exemption. *In re Estate of Willis*, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

ARTICLE 5

DISCHARGE AND RESIGNATION

53-7-50. Petition by personal representative for discharge; citation and publication; hearing; subsequently discovered estate.

JUDICIAL DECISIONS

Discharge vacated. — Probate court's order that discharged the administrator was vacated because a party in interest could file an objection to a petition for discharge and was entitled to a hearing thereon. Here, the administrator neither

listed the creditor with a disputed claim, nor did the administrator serve the creditor with notice of the administrator's petition for discharge. *In re Estate of Johnston*, 318 Ga. App. 324, 733 S.E.2d 856 (2012).

53-7-55. Revocation of letters of personal representative or other sanctions.

JUDICIAL DECISIONS

ANALYSIS

DISCRETIONARY POWER OF PROBATE COURT OR JURY

Discretionary Power of Probate Court or Jury

Removal of executor proper.

Probate court did not abuse the court's discretion by removing all four siblings as

co-executors because there was eminent distrust on all sides and the situation was untenable, thus, good cause existed for the removal order. *In re Estate of Hubert*, 325 Ga. App. 276, 750 S.E.2d 511 (2013).

ARTICLE 6

SETTLEMENT OF ACCOUNTS

PART 1

GENERAL PROVISIONS

53-7-62. Appearance before court; failure of personal representative to appear; right to appeal.

JUDICIAL DECISIONS

ANALYSIS

STATUTE OF LIMITATIONS GENERALLY

Statute of Limitations Generally

Summary judgment improperly granted to siblings on statute of limitations bar issue. — Trial court erred in granting summary judgment to the siblings on the basis that the challenging sister's claim against the estate seeking an accounting was time-barred because a

question of fact remained as to whether the sister was on notice that they had claimed any estate property adversely to the sister, thus, a jury had to decide whether the 10-year bar of O.C.G.A. § 9-3-27(2) began to run before that time. *In re Estate of Wade*, 331 Ga. App. 535, 771 S.E.2d 214 (2015).

PART 2

ANNUAL RETURNS AND INTERMEDIATE REPORTS

53-7-69. Power of testator to dispense with necessity of return.

JUDICIAL DECISIONS

Statute did not provide cause of action to creditor of the estate. — Because an estate's executors were exempted by the terms of the testator's will from the duty to file an accounting or inventory, a creditor of the estate was not entitled to compel the executors to file

such reports. O.C.G.A. §§ 53-7-33 and 53-7-69 did not provide for a cause of action but simply noted that the executors were not accountable for injury based on the exemption. *In re Estate of Willis*, 310 Ga. App. 377, 713 S.E.2d 464 (2011).

CHAPTER 8

INVESTMENTS, SALES, AND CONVEYANCES

ARTICLE 2

SALES AND CONVEYANCES

53-8-10. Authority of personal representative; petition by temporary administrator.

JUDICIAL DECISIONS

“Good cause” not shown. — Probate court erred when the court failed to find that an estate’s temporary administrator had “good cause” for the sale of estate property as required under O.C.G.A. § 53-8-10(b); the court’s finding that the sale was in the “best interest of the estate”

because the property was in disrepair and was costing the estate money was the standard applicable to personal representatives under § 53-8-10(a). *In re Estate of Price*, 324 Ga. App. 681, 751 S.E.2d 487 (2013).

53-8-15. Passage of title to heirs or beneficiaries; assent of personal representative.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Effect of assent generally.

Trial court properly granted summary judgment in favor of a mineral rights owner in an action brought by a ranch seeking to extinguish the rights because the owner derived the interest from a will

and, as both the devisee of the property under the will and as a co-executor of the estate, the owner had a legally enforceable interest in the reserved mineral rights. *Cartersville Ranch, LLC v. Dellinger*, 295 Ga. 195, 758 S.E.2d 781 (2014).

CHAPTER 9

MISSING PERSONS AND PERSONS BELIEVED TO BE DEAD

ARTICLE 1

ADMINISTRATION OF ESTATE

53-9-1. Presumption or proof of death; presumption that missing person predeceased other deceased individual; perils or tragedies resulting in probable death.

Cross references. — Presumptions, § 24-14-20 et seq.

CHAPTER 11

PROCEEDINGS IN PROBATE COURT

Sec.

53-11-11. Authentication or exemplification of document.

53-11-11. Authentication or exemplification of document.

Whenever it is required that a document to be filed in the probate court be authenticated or exemplified, such requirement shall be met by complying with the provisions of Code Section 24-9-922 and such full faith and credit shall be given to the document as is provided in that Code section. (Code 1981, § 53-11-11, enacted by Ga. L. 1996, p. 504, § 10; Ga. L. 2011, p. 99, § 100/HB 24; Ga. L. 2015, p. hb0090, § 53/HB 90.)

The 2015 amendment, effective March 13, 2015, part of an Act to revise, modernize, and correct the Code, substituted “Code Section 24-9-922” for “Code Section 24-7-922” near the middle of this Code section.

Law reviews. — For article, “Evidence,” see 27 Ga. St. U.L. Rev. 1 (2011). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 1 (2011).

CHAPTER 12

TRUSTS

ARTICLE 1

GENERAL PROVISIONS

53-12-1. Short title; effect on existing trusts.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 65 Mercer L. Rev. 295 (2013).

JUDICIAL DECISIONS

Retroactive application prohibited.

— Rights of the decedent's surviving spouse were already vested when the Revised Georgia Trust Code of 2010 (Revised Code), O.C.G.A. § 53-12-1 et seq., was enacted because under the terms of the amended trust agreement, the surviving spouse's rights to the trust assets took effect upon the decedent's death before the Revised Code took effect. Accordingly, any new obligation imposed by the Revised Code that would have impaired the surviving spouse's right to possession could not be applied retroactively. *Rose v. Waldrip*, 316 Ga. App. 812, 730 S.E.2d 529 (2012), cert. denied, No. S12C1888, 2012 Ga. LEXIS 981 (Ga. 2012).

Retroactive applicability of statute of limitations. — Revised Georgia Trust Code's provisions apply to any trust irrespective of the date the trust was created, with two exceptions: to the extent it would

impair vested rights, and except as otherwise provided by law. There is no vested right in a statute of limitation, and to the extent that *Mayfield v. Heiman*, 317 Ga. App. 322, (2012), suggests that O.C.G.A. § 53-12-307(a) does not apply retroactively, that suggestion is non-binding dicta. *Smith v. SunTrust Bank*, 325 Ga. App. 531, 754 S.E.2d 117 (2014).

Jury instruction on standard of care. — In a breach of trust action, the trial court did not apply an incorrect standard of care in that a co-trustee could only be held liable if the co-trustee failed to act in good faith because if there was any error, the error was created by the co-trustee since the co-trustee consented to the instructions given and failed to request a charge that clearly set forth what the co-trustee asserted to be the proper standard for acts performed with absolute discretion. *Reliance Trust Co. v. Candler*, 294 Ga. 15, 751 S.E.2d 47 (2013).

53-12-2. Definitions.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

Cited in *Rose v. Waldrip*, 316 Ga. App. 812, 730 S.E.2d 529 (2012), cert. denied,

No. S12C1888, 2012 Ga. LEXIS 981 (Ga. 2012); *Ansley v. Raczka-Long*, 293 Ga. 138, 744 S.E.2d 55 (2013).

53-12-6. Jurisdiction.**JUDICIAL DECISIONS****ANALYSIS****GENERAL CONSIDERATION****General Consideration**

Factual issues as to dual roles of trustees. — In a family trust dispute wherein the trustees had breached the trustees' fiduciary duty by failing to provide annual accountings, the appellate court remanded the case because factual issues existed as to whether the trustees were engaged in corporate duties and actions as opposed to trustee-level duties and actions, and whether those actions were taken in their roles as trustees, as managing partners, or as corporate officers or directors. *Rollins v. Rollins*, 329

Ga. App. 768, 766 S.E.2d 162 (2014).

Trial court's discretion as to accountings. — Appellate court erred by reversing a trial court and ordering that the trustees provide the beneficiaries of a family trust the accounting sought because the appellate court failed to give any consideration to the trial court's discretion to require or excuse an accounting. *Rollins v. Rollins*, 294 Ga. 711, 755 S.E.2d 727 (2014).

Cited in *Davison v. Hines*, 291 Ga. 434, 729 S.E.2d 330 (2012); *Hasty v. Castleberry*, 293 Ga. 727, 749 S.E.2d 676 (2013).

ARTICLE 2**CREATION AND VALIDITY OF EXPRESS TRUSTS****53-12-20. Express trusts.****JUDICIAL DECISIONS**

Cited in *Rector v. Bishop of the Episcopal Diocese of Ga., Inc.*, 290 Ga. 95, 718 S.E.2d 237 (2011); *Presbytery of Greater*

Atlanta, Inc. v. Timberridge Presbyterian Church, Inc., 290 Ga. 272, 719 S.E.2d 446 (2011).

53-12-25. Transfer of property to trust.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 65 *Merger L. Rev.* 295 (2013).

JUDICIAL DECISIONS

Wrongful death claim did not comprise the res of a technical trust. — Creditors' 11 U.S.C. § 523(a)(4) claim against a Chapter 13 debtor, their attorney, was dismissed because although the attorney failed to file a wrongful death complaint on the creditors' behalf and represented to the creditors that the attorney had, the creditors failed to allege a contract or other agreement establishing a technical trust. The creditors' wrongful

death cause of action did not comprise the res of a technical trust because under O.C.G.A. § 53-12-25 only property subject to transfer by the settler could become the subject matter of a trust, and under O.C.G.A. § 44-12-24 the creditors' wrongful death action was non-transferable. *Crisler v. Farr (In re Farr)*, No. 11-1009, 2011 Bankr. LEXIS 1875 (Bankr. M.D. Ga. May 18, 2011).

Retroactive application of statute

prohibited. — Rights of the decedent's surviving spouse were already vested when the Revised Georgia Trust Code of 2010 (Revised Code), O.C.G.A. § 53-12-1 et seq., was enacted because under the terms of the amended trust agreement, the surviving spouse's rights to the trust assets took effect upon the decedent's death before the Revised Code took effect. Accordingly, any new obligation imposed

by the Revised Code that would have impaired the surviving spouse's right to possession could not be applied retroactively, and O.C.G.A. § 53-12-25 would have had no application to the trust if it, in fact, created such a new obligation. *Rose v. Waldrip*, 316 Ga. App. 812, 730 S.E.2d 529 (2012), cert. denied, No. S12C1888, 2012 Ga. LEXIS 981 (Ga. 2012).

ARTICLE 3

REVOCABLE TRUSTS

53-12-40. Revocation and modification generally.

JUDICIAL DECISIONS

Settlor reserved right to amend trust. — Because a trust provided that the settlor "may at any time by duly executed written instrument alter or amend" the trust, the settlor had reserved the right to alter or amend the trust, O.C.G.A. § 53-12-40(a), and the settlor's

execution of a power of attorney clearly expressed the settlor's intent to name the settlor's son as the executor of the settlor's estate and the trust and was properly notarized under O.C.G.A. § 45-17-6(a)(1). *Strange v. Towns*, 330 Ga. App. 876, 769 S.E.2d 604 (2015).

ARTICLE 5

SPENDTHRIFT PROVISIONS AND CREDITORS' RIGHTS AND CLAIMS

53-12-80. Spendthrift provisions.

JUDICIAL DECISIONS

Relationship to bankruptcy. — In a case in which the issue was whether the campaign funds of the debtor, a candidate for public office who filed for Chapter 13 bankruptcy without incorporating the campaign, were the property of the bankruptcy estate, the spendthrift trust exception to the anti-alienation provision in 11 U.S.C. § 541(c)(1)(A) did not apply be-

cause the campaign funds were not held in a spendthrift trust under Georgia law. There was no evidence of a writing creating an express trust, let alone an express trust containing a valid spendthrift provision as required under O.C.G.A. § 53-12-80. *In re Chambers*, 451 B.R. 621 (Bankr. N.D. Ga. 2011).

53-12-82. Creditors' claims against settlor.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 66 Mercer L. Rev. 231 (2014).

ARTICLE 7
IMPLIED TRUSTS

53-12-130. Resulting trusts.

JUDICIAL DECISIONS

Genuine issue of material fact as to whether a constructive trust should be implied. — Trial court erred in granting summary judgment to a record title holder in a quiet title action because a disputed question of material fact existed whether the holder had agreed to deed back the properties at issue to the claimant after financing fell through; thus, a dispute existed as to whether a constructive trust should be implied under the circumstances. *Ansley v. Raczka-Long*, 293 Ga. 138, 744 S.E.2d 55 (2013).

Insufficient evidence of a resulting trust.

Best interest of creditors' test under 11 U.S.C. § 1325(a)(4) was not met by the

proposed plan of Chapter 13 debtors because the plan did not account for the recoverable value of the debtor's transfer of the debtor's interest in property given to the debtor by the debtor's mother. A resulting trust under O.C.G.A. § 53-12-130(1) in favor of the mother was not created based on the nature of her transaction and the conduct of the parties, and a purchase money resulting trust under § 53-12-130(3) did not arise because the transfer from the mother to the brothers was made without consideration. *Meredith v. Weigl (In re Weigl)*, No. 10-60341, 2011 Bankr. LEXIS 2246 (Bankr. S.D. Ga. Jan. 18, 2011).

53-12-131. Purchase money resulting trusts.

JUDICIAL DECISIONS

ANALYSIS

**GENERAL CONSIDERATION
PRESUMPTION OF GIFT**

General Consideration

Property between spouses.

After a debtor appealed a bankruptcy court's order finding that the debtor's transfer of half interest in three lots of real property to the debtor's spouse was a fraudulent conveyance, the debtor's spouse was not entitled to an implied purchase money resulting trust. The spouse did not pay consideration for the property to be transferred to the debtor when the debtor initially acquired the property, and the spouse did not own a half interest in the property by virtue of a purchase money resulting trust or otherwise. *McFarland v. Wallace (In re McFarland)*, No. 113-210, 2014 U.S. Dist. LEXIS 111198 (S.D. Ga. Aug. 8, 2014).

Genuine issue of material fact as to

whether a constructive trust should be implied. — Trial court erred in granting summary judgment to a record title holder in a quiet title action because a disputed question of material fact existed whether the holder had agreed to deed back the properties at issue to the claimant after financing fell through, thus, a dispute existed as to whether a constructive trust should be implied under the circumstances. *Ansley v. Raczka-Long*, 293 Ga. 138, 744 S.E.2d 55 (2013).

Presumption of Gift

Presumption of gift.

Spouse of a bankruptcy debtor had no interest in real properties prior to a transfer from the debtor since no purchase money resulting trust was created in the absence of any consideration paid by the

Presumption of Gift (Cont'd)

spouse for the purchase of the properties by the debtor and the lack of evidence of the intent of the debtor and the spouse to

create the trust to rebut the presumption that the transfer was a gift. *Wallace v. McFarland* (In re McFarland), No. 11-01021, 2013 Bankr. LEXIS 4112 (Bankr. S.D. Ga. Sept. 30, 2013).

53-12-132. Constructive trusts.**JUDICIAL DECISIONS**

Genuine issue of material fact as to whether a constructive trust should be implied. — Trial court erred in granting summary judgment to a record title holder in a quiet title action because a disputed question of material fact existed whether the holder had agreed to deed back the properties at issue to the claimant after financing fell through; thus, a dispute existed as to whether a constructive trust should be implied under the circumstances. *Ansley v. Raczka-Long*, 293 Ga. 138, 744 S.E.2d 55 (2013).

Inordinate delay.

Former wife was not entitled to impose a constructive trust on her former husband's military pension pursuant to O.C.G.A. § 53-12-132 because she failed to object to the absence of any provision for the pension in their divorce decree for 12 years and failed to bring suit until five years after payments allegedly became due. *Davis v. Davis*, 310 Ga. App. 512, 713 S.E.2d 694 (2011).

ARTICLE 10**PRIVATE FOUNDATIONS****PART 2****TRUSTS****53-12-193. Election of trustees of private foundation or charitable trust to distribute such trust principal as will enable trust to avoid tax liability; filing of written election with Attorney General; form of distribution; revocation of election.****JUDICIAL DECISIONS**

Cited in *Reliance Trust Co. v. Candler*, 294 Ga. 15, 751 S.E.2d 47 (2013).

ARTICLE 13
TRUSTEES' DUTIES AND POWERS

PART 1
DUTIES OF TRUSTEE

53-12-241. Duty of prudent administration.

JUDICIAL DECISIONS

Breach of trust properly found. — Trial court correctly ruled that a trustee breached the trustee's duty to faithfully administer a marital trust, and the trustee's alleged reliance on professional advice would not shield the trustee from potential liability for such breach of trust be-

cause under the plain language of the will, the trustee overreached the narrowly-tailored power to encroach upon the principal of the trust only for purposes related to the widow's welfare, not for a gift to a university. *Hasty v. Castleberry*, 293 Ga. 727, 749 S.E.2d 676 (2013).

53-12-243. Duty to provide reports and accounts.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 66 Mercer L. Rev. 231 (2014).

JUDICIAL DECISIONS

Failure to order accounting. — Appellate court erred by reversing a trial court and ordering that the trustees provide the beneficiaries of a family trust the accounting sought because the appellate court failed to give any consideration to the trial court's discretion to require or excuse an accounting. *Rollins v. Rollins*, 294 Ga. 711, 755 S.E.2d 727 (2014).

Suit against trustee governed by six year limitations period, not two year. — Because the letter to a trustee from the trustee's accountants was simply a form of general correspondence that did not contain the type of detailed information contemplated by the Georgia General Assembly for the letter to qualify as a report, the letter was not a report for

purposes of the Trust Code, O.C.G.A. § 53-12-307; therefore, a beneficiary's cause of action against the trustee was not subject to the two-year statute of limitations but, rather, the six-year statute of limitations applied. *Hasty v. Castleberry*, 293 Ga. 727, 749 S.E.2d 676 (2013).

Account statement insufficient report to shorten statute of limitations. — Trust's account statement reflecting a sale of the principal asset of the trust was not a "report" because there was insufficient disclosure of the nature of the transaction to trigger the running of the shortened two-year limitation period under O.C.G.A. § 53-12-307(a). *Smith v. SunTrust Bank*, 325 Ga. App. 531, 754 S.E.2d 117 (2014).

53-12-244. Duty to distribute income.

JUDICIAL DECISIONS

Trial court's discretion as to accountings. — Appellate court erred by reversing a trial court and ordering that

the trustees provide the beneficiaries of a family trust the accounting sought because the appellate court failed to give

any consideration to the trial court's discretion to require or excuse an accounting.

Rollins v. Rollins, 294 Ga. 711, 755 S.E.2d 727 (2014).

53-12-246. Duty to avoid conflict of interest.

JUDICIAL DECISIONS

Dual role permitted. — O.C.G.A. § 53-12-246(b) expressly recognizes that trustees may act in a dual role when the trust estate owns an interest in a corporation or business enterprise, as long as it is fair to the beneficiaries. Rollins v. Rollins, 294 Ga. 711, 755 S.E.2d 727 (2014).

Sale of trust asset to a co-trustee through a straw man. — Because there were genuine issues as to whether trustees fraudulently concealed their breach of fiduciary duty in selling the principal trust asset to a co-trustee at a discount through a straw man in 1979, tolling the statute of limitations, and whether the beneficiaries exercised diligence in discovering the fraud, summary judgment was improper. Smith v. SunTrust Bank, 325 Ga. App. 531, 754 S.E.2d 117 (2014).

Factual issues as to dual roles of trustees. — In a family trust dispute wherein the trustees had breached the trustees' fiduciary duty by failing to pro-

vide annual accountings, the appellate court remanded the case because factual issues existed as to whether the trustees were engaged in corporate duties and actions as opposed to trustee-level duties and actions, and whether those actions were taken in their roles as trustees, as managing partners, or as corporate officers or directors. Rollins v. Rollins, 329 Ga. App. 768, 766 S.E.2d 162 (2014).

No conflict of interest existed. — Trial court erred by awarding summary judgment to a beneficiary on the question of whether the trustee acted under a conflict of interest simply by serving as trustee of the marital trust while at the same time serving as co-chair of a university's capital campaign committee to which a gift was made from trust assets because the trustee did not stand to gain any tangible benefit solely by being co-chair of the committee while concurrently serving as trustee of the marital trust. Hasty v. Castleberry, 293 Ga. 727, 749 S.E.2d 676 (2013).

PART 2

TRUSTEES' POWERS

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 66 Mercer L. Rev. 231 (2014).

53-12-260. Discretionary powers.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

administration, see 64 Mercer L. Rev. 325 (2012).

JUDICIAL DECISIONS

Jury instruction on standard of care. — In a breach of trust action, the trial court did not apply an incorrect standard of care in that a co-trustee could only be held liable if the co-trustee failed to act in good faith because if there was any error, the error was created by the

co-trustee since the co-trustee consented to the instructions given and failed to request a charge that clearly set forth what the co-trustee asserted to be the proper standard for acts performed with absolute discretion. Reliance Trust Co. v. Candler, 294 Ga. 15, 751 S.E.2d 47 (2013).

ARTICLE 14

TRUSTEE LIABILITY

53-12-300. Accountable to beneficiary; breach of trust.

JUDICIAL DECISIONS

Trustee properly found to have breached fiduciary duty. — It was not an abuse of discretion to deny a new trial motion brought by a trustee who was found to have breached the trustee's fiduciary duty to trust beneficiaries by making distributions to a co-trustee under a trust's encroachment provision because the trustee breached the trustee's duty to protect the trust corpus as: (1) the trustee inconsistently required the co-trustee to provide supporting evidence for corpus distributions and let the co-trustee exceed an allotted budget; and (2) the beneficiaries were damaged by the resulting reduction in trust corpus. *Reliance Trust Co. v. Candler*, 315 Ga. App. 495, 726 S.E.2d 636 (2012).

Breach of trust issue for jury. — In a trust beneficiary's action against a co-trustee and others, issues of fact remained as to the beneficiary's claims for breach of fiduciary duty arising out of the sale of a trust asset for less than fair market value and failure to account for a commission owed on the sale, rendering

summary judgment on these claims improper. *Kahn v. Britt*, 330 Ga. App. 377, 765 S.E.2d 446 (2014).

In a beneficiary's claims against a trustee and the trust's attorneys, issues of fact remained as to the trustee's and attorneys' duties surrounding the sale of the trust's cattle ranch at auction because no appraisal was done, the sale was only run for seven weeks, the trustee believed the land was worth more than the price obtained, and the trustee failed to consider a commission due to a real estate agent. *Kahn v. Britt*, No. A14A1017, 2014 Ga. App. LEXIS 767 (Nov. 17, 2014).

Sale of trust asset to a co-trustee through a straw man. — Because there were genuine issues as to whether trustees fraudulently concealed their breach of fiduciary duty in selling the principal trust asset to a co-trustee at a discount through a straw man in 1979, tolling the statute of limitations, and whether the beneficiaries exercised diligence in discovering the fraud, summary judgment was improper. *Smith v. SunTrust Bank*, 325 Ga. App. 531, 754 S.E.2d 117 (2014).

53-12-301. Actions for breach of trust.

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

General Consideration

University properly required to stay in suit. — Trial court properly denied a university's motion to dismiss for failure to state a claim in a breach of fiduciary suit because the trust trustee

had authorized the transfer of \$ 1 million from the trust to the university and such funds were subject to a constructive trust since the funds were held by the university. *Reinhardt Univ. v. Castleberry*, 318 Ga. App. 416, 734 S.E.2d 117 (2012).

53-12-302. Damages for breach of trust; interest.

JUDICIAL DECISIONS

Interest. — It was not error to award trust beneficiaries interest from the date of encroachment for the trustee's breach of the trustee's fiduciary duty to the beneficiaries under a trust's encroachment provision by making distributions to a co-trustee because: (1) O.C.G.A. § 53-12-302(a)(1) and (3) said the trustee was liable for interest; and (2) under O.C.G.A. § 53-12-302(b), a trustee was liable for interest from the date of a breach. *Reliance Trust Co. v. Candler*, 315 Ga. App. 495, 726 S.E.2d 636 (2012).

53-12-303. Relief of liability.

JUDICIAL DECISIONS

Document delegating individual as co-trustee was not "trust instrument." — Co-trustee was entitled to summary judgment on a trust beneficiary's breach of fiduciary duty claim because the beneficiary waived any claim against the co-trustee in the delegation instrument; former O.C.G.A. § 53-12-194(a), prohibiting such waivers of claims against trustees in a trust instrument, did not apply because the delegation instrument was not a trust instrument. *Kahn v. Britt*, 330 Ga. App. 377, 765 S.E.2d 446 (2014) (decided under former O.C.G.A. § 53-12-194).

53-12-307. Limitation of actions.

Law reviews. — For annual survey on wills, trusts, guardianships, and fiduciary

Appellate court erred by affirming an award of prejudgment interest to the remainder beneficiaries in a breach of trust action because under O.C.G.A. § 53-12-302(a)(3), the amount that would have reasonably accrued to them if there had been no breach was the amount they were awarded in actual damages and they were not entitled to interest under the terms of the trust instrument. *Reliance Trust Co. v. Candler*, 294 Ga. 15, 751 S.E.2d 47 (2013).

Instrument naming an individual as co-trustee was not a trust instrument. — Pursuant to an instrument delegating a trustee as co-trustee, the trust beneficiary waived any claim against the trustee for acts relating to an asset transfer by the beneficiary; former O.C.G.A. § 53-12-194(a), prohibiting such insulations from liability, applied to trust instruments, and the document delegating the co-trustee was not a trust instrument. *Kahn v. Britt*, No. A14A1017, 2014 Ga. App. LEXIS 767 (Nov. 17, 2014) (decided under former O.C.G.A. § 53-12-194).

administration, see 66 Mercer L. Rev. 231 (2014).

JUDICIAL DECISIONS

Issue of fact as to whether trustees fraudulently concealed their breach of duty. — Because there were genuine issues as to whether the trustees fraudulently concealed the trustees' breach of fiduciary duty in selling the principal trust asset to a co-trustee at a discount through a straw man in 1979, tolling the statute of limitations, and whether the

beneficiaries exercised diligence in discovering the fraud, summary judgment was improper. *Smith v. SunTrust Bank*, 325 Ga. App. 531, 754 S.E.2d 117 (2014).

Cause of action not barred by statute of limitations.

Beneficiaries' breach of fiduciary duty claim against the trustee of a family trust was time-barred because: (1) the statute

began to run when the trustee entered into a loan transaction that allegedly harmed the trust; (2) the beneficiaries did not show the trustee withheld information from the beneficiaries, deterred the beneficiaries from hiring the beneficiaries' own advisor to review the loan, or deterred the beneficiaries from timely filing suit; and (3) the beneficiaries raised no fact issue as to whether the beneficiaries used diligence to discover any fraud that would toll the statute. *Mayfield v. Heiman*, 317 Ga. App. 322, 730 S.E.2d 685 (2012).

Retroactive applicability of statute of limitations. — Revised Georgia Trust Code's provisions apply to any trust irrespective of the date the trust was created, with two exceptions: to the extent it would impair vested rights, and except as otherwise provided by law. There is no vested right in a statute of limitation, and to the extent that *Mayfield v. Heiman*, 317 Ga.

App. 322, (2012), suggests that O.C.G.A. § 53-12-307(a) does not apply retroactively, that suggestion is non-binding dicta. *Smith v. SunTrust Bank*, 325 Ga. App. 531, 754 S.E.2d 117 (2014).

Suit against trustee governed by six year limitations period, not two year. — Because the letter to a trustee from the trustee's accountants was simply a form of general correspondence that did not contain the type of detailed information contemplated by the Georgia General Assembly for the letter to qualify as a report, the letter was not a report for purposes of the Trust Code, O.C.G.A. § 53-12-307; therefore, a beneficiary's cause of action against the trustee was not subject to the two-year statute of limitations but, rather, the six-year statute of limitations applied. *Hasty v. Castleberry*, 293 Ga. 727, 749 S.E.2d 676 (2013).

ARTICLE 16

TRUST INVESTMENTS

PART 1

INVESTMENTS GENERALLY

53-12-340. Investment standard.

JUDICIAL DECISIONS

Breach of trust properly found. — Trial court correctly ruled that a trustee breached the trustee's duty to faithfully administer a marital trust, and the trustee's alleged reliance on professional advice would not shield the trustee from potential liability for such breach of trust be-

cause under the plain language of the will, the trustee overreached the narrowly-tailored power to encroach upon the principal of the trust only for purposes related to the widow's welfare, not for a gift to a university. *Hasty v. Castleberry*, 293 Ga. 727, 749 S.E.2d 676 (2013).

